United States Court of Appeals for the District of Columbia

OCTOBER TERM, 1936.

No. 6865

IOWA CITY LIGHT AND POWER COMPANY, A CORPORATION, APPELLANT,

vs.

HAROLD L. ICKES, ADMINISTRATOR OF THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS; HORATIO B. HACKETT, ASSISTANT ADMINISTRATOR THEREOF; JOHN HERRICK, EXECUTIVE ASSISTANT THEREOF; JOHN J. MADIGAN, ACTING EXECUTIVE OFFICER THEREOF; F. E. SCHNEPFE, DIRECTOR OF PROJECTS DIVISION THEREOF; HARRY L. HOPKINS, ADMINISTRATOR OF WORKS PROGRESS ADMINISTRATION; HENRY MORGENTHAU, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES; W. A. JULIAN, TREASURER OF THE UNITED STATES, AND GUY ALLEN, CHIEF DISBURSING OFFICER, DIVISION OF DISBURSEMENTS OF THE TREASURY OF THE UNITED STATES, DEFENDANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

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a District Court of the United States
for the District of Columbia.

In Equity No. 60245

IOWA CITY LIGHT AND POWER COMPANY, a corporation,
Plaintiff,

vs.

HAROLD L. ICKES, Administrator of the Federal Emergency Administration of Public Works; HORATIO B. HACKETT, Assistant Administrator thereof; JOHN HERRICK, Executive Assistant thereof; JOHN J. MADIGAN, Acting Executive Officer thereof; F. E. SCHNEPFE, Director of Projects Division thereof; HARRY L. HOPKINS, Administrator of Works Progress Administration; HENRY MORGENTHAU, JR., Secretary of the Treasury of the United States; W. A. JULIAN, Treasurer of the United States, and GUY ALLEN, Chief Disbursing Officer, Division of Disbursements of the Treasury of the United States, *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint*

- Filed December 10 1935

In the Supreme Court of the District of Columbia

Holding an Equity Court

Equity No. 60245

IOWA CITY LIGHT AND POWER COMPANY a corporation,
Plaintiff,

vs.

HAROLD L. ICKES, Administrator of the Federal Emergency Administration of Public Works; HORATIO B. HACKETT, Assistant Administrator thereof; JOHN HERRICK, Executive Assistant thereof; JOHN J. MADIGAN, Acting Executive Officer thereof; F. E. SCHNEPFE, Director of Projects Division thereof; HARRY L. HOPKINS, Administrator of Works Progress Administration; HENRY MORGENTHAU, JR., Secretary of the Treasury of the United States; W. A. JULIAN, Treasurer of the United States, and GUY ALLEN, Chief Disbursing Officer, Division of Disbursements of the Treasury of the United States, *Defendants.*

Now comes the Plaintiff and files this its Bill of Complaint, and for its cause of action against the Defendants alleges:

Paragraph I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware, and has its princi-
2 pal office in said state and its corporate domicile in the City of Wilmington, Delaware, but is qualified to do business in the State of Iowa as a foreign corporation, and has its principal office in said state in the City of Iowa City, Iowa, and sues in its own right.

Paragraph II.

The Defendants and each of them are administrative officers or employees of the United States of America, residing in the District of Columbia, and can be found within the District of Columbia, and are more particularly identified as herein specifically set forth:

Harold L. Ickes is the duly appointed, qualified, and acting Administrator of the Federal Emergency Administration of Public Works (hereinafter called PWA), appointed by Executive Order of the President of the United States of America dated July 8, 1933, in pursuance of the provisions of Section 201 (a) of Title II of the Act of Congress of June 16, 1933, entitled "National Industrial Recovery Act".

Horatio B. Hackett is the duly appointed, qualified, and acting Assistant Administrator of PWA.

3 John Herrick is the duly appointed, qualified, and acting Executive Assistant of PWA.

John J. Madigan is the duly appointed and qualified Acting Executive Officer of PWA.

F. B. Schnepfe is the duly appointed, qualified, and acting Director of Projects Division of PWA.

Harry L. Hopkins is the duly appointed, qualified and Acting Administrator of the Works Progress Administration (herein called WPA) appointed by Executive Order of the President of the United States, numbered 7034, dated May 6, 1935, in pursuance of the provisions of Section 201 (a) of Title II of the National Industrial Recovery Act;

Henry Morgenthau, Jr. is the duly appointed, qualified, and acting Secretary of the Treasury of the United States and, as such, has general supervision and control over the disbursement of the public funds of the United States.

W. A. Julian is the duly appointed, qualified, and acting Treasurer of the United States and, as such, is, under the supervision of the Secretary of the Treasury, in control of the disbursement of the public funds of the United States.

Guy Allen is the duly appointed, qualified, and acting Chief Disbursing Officer of the Treasury Department

4 and, as such, is at the head of the Division of Disbursements of the Treasury Department and is in control of the actual drawing and issuing of checks on behalf of the United States and the actual disbursements of the public funds of the United States.

Said defendants and each of them are, as hereinafter more specifically set forth, exercising and threatening to exercise, and are performing and threatening to continue to perform certain acts pursuant to alleged powers and

authority claimed by them and each of them to be conferred upon them and each of them in their aforesaid official capacities under the National Industrial Recovery Act and under the Emergency Relief Appropriation Act of 1935 and other Acts of Congress but which powers and authority are not actually, lawfully or constitutionally conferred upon or vested in them or in any of them thereby.

Paragraph III.

This is a civil cause in equity, arising under the Constitution and laws of the United States, and under the equity powers of the courts of the District of Columbia.

Paragraph IV.

The City of Iowa City, Iowa, is a municipal corporation organized and existing under the general municipal corporation laws of the State of Iowa, whose territorial
5 limits are now and at all other times hereinafter mentioned have been entirely within the County of Johnson in the State of Iowa.

Paragraph V.

Plaintiff institutes and brings this action both as a Federal, State, County and Municipal taxpayer suffering special and substantial damages not suffered by such taxpayers generally, and also as the owner of real and personal property and franchises which will be irreparably injured, damaged or destroyed, unless the relief prayed for herein is granted, and thereby Plaintiff will suffer direct pecuniary loss amounting to many thousands of dollars, all as more particularly set forth in the next succeeding paragraphs.

Paragraph VI.

Plaintiff is a taxpayer of the United States and of the State of Iowa and of the City of Iowa City, and is, in fact, the heaviest taxpayer in said City, being liable each year for Federal taxes of approximately Twenty Thousand Dollars ($20,000) exclusive of Federal excise taxes, and for state and local taxes of approximately Twenty-five Thousand Dollars ($25,000) exclusive of sales taxes; that
6 it is the owner of property in Johnson County, Iowa,

subject to taxation for state and city purposes and for all proper federal purposes. Plaintiff is subject to special tax burdens to which taxpayers generally are not subject, including among others, the tax upon electrical energy sold by Plaintiff for domestic and commercial consumption in an amount equal to three per cent (3%) of the price for which Plaintiff sells the same, imposed by Section 616 of the Federal Revenue Act of 1932 as amended.

Paragraph VII.

Plaintiff is now and for a number of years last past has been engaged in the manufacture and generation of gas and electrical energy and in the transmission, distribution and sale thereof to the City of Iowa City and the inhabitants thereof, to the incorporated Town of Coralville in Johnson County, Iowa, and its inhabitants, and to the incorporated Town of University Heights and its inhabitants, and to the unincorporated village known as Coralville Heights and its inhabitants, and to the inhabitants of rural territory adjoining and surrounding the City of Iowa City, Iowa.

7 Plaintiff owns a combined steam and hydro electric plant at Coralville in Johnson County, Iowa distant about two (2) miles from Iowa City and a gas plant and gas and electricity distribution systems in Iowa City, which plants and distribution systems are modern and efficient, and are sufficient to supply all the present and reasonably to be anticipated future needs of Iowa City and the territory now served by Plaintiff; that Plaintiff's present service is modern, adequate and efficient and of a high order, and that it adequately serves the territory aforesaid; that Plaintiff's entire business is wholly intrastate. The value of Plaintiff's electric plant and distribution system is $1,482,899, and the value of its gas plant and distribution system is $716,780. The gross revenue received by Plaintiff during the year 1934 from its electric service amounted to $464,363.80.

Paragraph VIII.

In the year 1934 the Town of Coralville granted Plaintiff an electric franchise extending for the term of twenty-five (25) years. In the year 1935 the incorporated Town of University Heights granted Plaintiff an electric franchise

for a term of fifteen (15) years. Such franchises are now in full force and effect. Plaintiff possesses valid
8 operating rights and franchises for serving all the rural territory contiguous to Iowa City. In the year 1909 Iowa City, Iowa granted Plaintiff's predecessor in interest an electric franchise which franchise was validly assigned to this Plaintiff in the year 1912. By its terms the franchise so granted by the City of Iowa City expired on the 11th day of January, 1934. Since the expiration of such franchise, the City of Iowa City has regulated the rates to be charged by Plaintiff in furnishing electric service. Plaintiff has continued to supply the City of Iowa City and the inhabitants thereof with electric service; and during such period has sold or contracted to sell to the City of Iowa City electric light and power for its sewage disposal system under contract entered into in November, 1935, which contract extends for the period of one year with a right of renewal thereof on the part of the City; and has sold light for lighting the streets and public buildings and other public places therein. The City of Iowa City has given Plaintiff no notice to cease the use of the streets, alleys and other public places in supplying it and its inhabitants with electric light and power, and has given no notice to Plaintiff to remove its poles and wires from
9 the streets, alleys and other public places therein, but has continued to utilize Plaintiff's facilities and to receive and avail itself of Plaintiff's service. Plaintiff is the only person, firm or corporation engaged in supplying electric light and power to the City of Iowa City and to the other communities served by it and to their inhabitants, and is the only person, firm or corporation now able to supply electric light and power to such communities and their inhabitants.

Paragraph IX.

Power to regulate rates for electric services in the City of Iowa City is vested by the laws of the State of Iowa in the City Council. The rates charged the consumer of electricity in Iowa City by Plaintiff are reasonable rates, and the average cost of electrical energy to the inhabitants of Iowa City has decreased over fifty per cent (50%) since 1922, and the rates now in force therein were established

by the City Council of said City in the month of July 1934, and are such that the average cost of electricity to the consumer is less than the average cost in any City in Iowa similarly situated and of comparable size.

10

Paragraph X.

Plaintiff has made its investment in its combined steam and hydro-electric plant at Coralville and in its electricity distribution system in Iowa City, and has incurred the risk thereof in the reasonable expectation that it would receive and continue to receive the patronage and business of Iowa City and its inhabitants until such time, if ever, as said City should lawfully terminate Plaintiff's right to serve the City and its inhabitants, and lawfully procure or provide for other sources of supply of electric energy, and until such time Plaintiff is entitled and is obligated by law to continue to render such services to such City and its inhabitants.

Paragraph XI.

Plaintiff's services are, and at all times have been, adequate and satisfactory, and there have been no complaints or proceedings of any sort instituted on account of any claimed inadequacy or insufficiency with respect thereto. Plaintiff's rates for each of its services do not yield a return in excess of a fair and lawful return on the fair

11 value of its property used and useful in rendering such service to the public. In the natural course of events said City and its inhabitants would continue to purchase from Plaintiff for a long time to come all requirements of electricity, at least to the extent now so purchased; and, in any event, they would do so unless and until said City might in a legal manner procure the authority and means of producing its own supply of electric energy.

Paragraph XII.

Plaintiff is informed, and believes, and so alleges, that PWA under the direction of Defendant Ickes and with the connivance and cooperation of the other Defendants herein, including the Defendant Hopkins and the WPA, has conceived, and for some time past has been executing throughout the country, a plan to promote municipal ownership

of local electric utilities and to set up such utilities to serve as "yardsticks" for the regulation of the
12 rates of privately owned utilities. This plan is not intended to be, and, in fact, is not a regulation of interstate commerce or of any commerce affecting interstate commerce, but is a regulation of purely intrastate commerce carried out without regard to local state policies as to the appropriate bounds of public ownership or as to the unreasonableness of existing rates, thereby extending Federal control over matters of intrastate commerce and local police power.

This plan is effectuated by a pretended resort to the powers allegedly given PWA and the Defendants herein by Title II of the National Industrial Recovery Act, supplemented more recently by the Emergency Relief Appropriation Act of 1935. Purporting to act thereunder PWA and the Defendants have made open offers and representations throughout the country that they will authorize, finance and construct electric systems as public works projects under said Acts upon the application of municipalities therefor. In order to induce municipalities in the
13 various states to make applications and to conspire and act in concert with the Defendants in the accomplishment of their illegal purpose and in the unconstitutional and illegal disbursement of public monies of the United States, PWA and the Defendants have publicly and privately offered to give outright to municipalities 30% of the cost of construction of local intrastate electric systems. More recently, pursuant to the unrestricted terms of the aforesaid Emergency Relief Appropriation Act of 1935, this offer has been liberalized to include, in many cases, a gift of 45% of such cost. It is also provided that, where necessary, the remainder of the cost of such PWA projects will be met by PWA through so-called "loans" at low interest rates of 3½% or 4%, which rates are, in many cases, much lower than those at which funds would be available from other sources to such municipalities for such purposes, the "loans" to be repaid over a long period of years; furthermore it is represented to the municipalities of the country that they may secure such "loans" as mere advances to be repaid if at all solely from the net earnings of such electric systems. In many cases PWA proceeds

with such a project with no prospect whatever that its so-called "loan" will ever be repaid. Further to in-
14 duce such applications, agents acting for PWA and the Defendants have repeatedly canvassed various sections of the country where PWA has, in accordance with its plan, deemed such projects especially desirable; such agents have met with municipal officials and have urged and suggested to them that they should make applications for such electric systems. Through newspaper and other publicity PWA has sought to induce such applications and to stimulate interest in the inauguration of such municipal systems. This plan is frankly acknowledged by PWA in public press releases, in public statements of Defendant Ickes, in instructions given to PWA and/or WPA agents charged with the administration of PWA and/or WPA functions, in negotiations with existing private utilities and otherwise.

Having induced municipalities to make such applications, PWA and the Defendants, and particularly the Defendant Ickes and his agents, select those which fit into their scheme of social planning. That is, those localities are selected wherein the presence of a publicly owned electric system seems to PWA to be most desirable and most effective as a so-called yardstick, the operations of which would drive down the rates of existing privately owned utilities
15 either by direct competition in the locality or by the fear on the part of the private utility in an adjacent locality that the operation of the PWA system would lead to demand for similar systems in its locality. In order most effectively to obtain its ends PWA will usually suspend its proposal to finance and construct such a system if the existing privately owned system will reduce its rates to a level deemed by PWA to be "socially desirable"; otherwise the project is financed and constructed. PWA has never definitely and publicly formulated the level to which it requires private utilities to conform their rates, but acts in an aribtrary, unforeseeable manner in each case. The rates so exacted, however, do not provide a reasonable return to such utilities upon their investment, are much less than those fixed by authorized state regulatory bodies, and are determined without hearing such utilities and without any consideration whatever of the elements required by the

due process clauses of the Fifth and Fourteenth Amendments to be considered in rate regulation.

In furtherance of said plan, among other things, PWA and the defendants have recently issued circulars designated PWA Circulars A, B, C, and D, setting forth a general, open, and unrestricted offer of PWA to make
16 loans, grants, or loans and grants of Federal funds, ostensibly under the National Industrial Recovery Act or under the Emergency Relief Appropriation Act of 1935, but which aim to effectuate and carry out the aforesaid plan. The terms embodied in said open offer include the terms and conditions which have been or will be in substance imposed upon the City of Iowa City, as hereinafter more particularly set forth, and such open offer constitutes the open and explicit parts of the plans of PWA and the defendants which, supplemented by implied understandings and obligations, enable PWA and the Defendants to bring the Federal Government into a field forbidden to it by the Federal Constitution, and by contract and economic power wholly to dominate such local electric utility service to the exclusion of state and local authorities and to the reckless and lawless destruction of the property and rights of the companies such as Plaintiff, lawfully supplying electric service in said municipalities.

In granting or rejecting applications induced as aforesaid, PWA has been especially freed by the Defendant Hopkins from the requirement that such projects may be undertaken only where there is labor for construc-
17 tion available on relief rolls, and PWA and defendants in fact proceed wholly without regard to the possibility that unemployed men in the vicinity or otherwise will be given employment even of a temporary nature, so that whether any, slight or much employment is given is purely fortuitous. Moreover the dependability and economic soundness of existing private facilities, the capacity of the areas to absorb increased electric production, and other considerations relating to the need for such electric systems are excluded entirely by PWA in making its decisions. On the contrary, the dominant, determining and in many cases the sole consideration entertained by PWA and the defendants is the rate level of the existing utilities and the question whether a PWA municipal system will fit in

most effectively with the aforesaid scheme and plan of PWA to control and lower electric rates throughout the country and to cover the country with publicly owned systems for the demonstraton of conceptions of social planning entertained by PWA and the Defendants.

Upon selection of a municipality for such a project PWA enters into negotiations with it, looking to an agreement or arrangement, similar to that entered or to be
18 entered into with the City of Iowa City hereinafter more particularly described. PWA affords such a municipality free engineering and legal advice, revises plans, specifications and drawings, and exerts every influence upon said City to secure compliance with its ideas of how the project should be designed, constructed and operated best to carry into effect PWA's and Defendants' unlawful plan herein set forth. The municipality becomes in fact, the mere tool of PWA and while the project is being carried out and constructed and thereafter operated, the PWA requires that every move be taken only with the specific approval, oversight, and direction of its agents, as will be apparent from the typical arrangement with the City of Iowa City above referred to. Where PWA considers it necessary to its scheme of control, as aforesaid, it retains absolute power over the rates to be charged by the proposed plant in order most effectively to carry out its aforesaid plan and to control and if possible to destroy any existing privately owned system directly competing with such PWA system. Where possible, PWA procures understandings from the municipality that the privileges and franchises of the existing system will be revoked and
19 terminated when the PWA project is ready for operation.

Paragraph XIIa.

Pursuant to and as part of the foregoing plan and scheme of the PWA and the Defendants, and their activities and the activities of their agents in furtherance of said plan or scheme, the City of Iowa City and the Mayor, members of the City Council and other officials of said City, acting both individually and jointly, were moved and induced to conspire, confederate and unlawfully agree with the Defendants, by and through unlawful means, including unlawful

use of public funds of the United States and in violation of Plaintiff's rights under the Constitution of the State of Iowa and of the United States of America and the statutes enacted pursuant thereto, to finance and to cause the construction in the City of Iowa City of a steam electric generating plant and an electric distribution system. Such facilities would completely duplicate and render useless Plaintiff's adequate, modern and efficient facilities by which such services were then and are now rendered to said City and its inhabitants, and would thereby deprive Plaintiff of the business of said City and its inhabitants and of all of its revenues therefrom, all of which would unlawfully destroy or greatly impair the value of Plaintiff's prop-
20 erty and franchises used in rendering such service.

Likewise, pursuant to and as a part of such scheme and conspiracy, on or about the 8th day of January, 1934, an application was made by said City of Iowa City to the PWA and Defendant Ickes for a loan and grant totaling $917,000, a copy of which application is hereto attached marked Exhibit "A" and by this reference made a part hereof. That in September, 1934, in further pursuance of such unlawful conspiracy, such application was approved by PWA, and PWA and Defendant Ickes submitted to the City Council of Iowa City a loan and grant agreement, a copy of which is hereto attached marked Exhibit "B" and by this reference made a part hereof; that under the terms of said loan and grant agreement provision was made for the advance to Iowa City of a total of $917,000, of which 30% of the cost of labor and materials to be used in said project would be a grant and the balance a loan at 4% interest to be evidenced by revenue bonds to be payable out of the future earnings of the plant; that thereafter on or about the 5th day of October, 1934, the City Council of Iowa City adopted a resolution to withdraw the City's applica-
tion for a loan and grant and to return said loan and
21 grant agreement to Defendant Ickes as Administrator of the Federal Emergency Administration of Public Works; that thereafter on the 5th day of April, 1935, the City Council of Iowa City made application for the renewal and reinstatement of its original application for a loan and grant, and Plaintiff is informed, and believes, and therefore alleges, that pursuant to and as a part of

such scheme and conspiracy such application was reinstated by PWA; that thereafter and on or about the 17th day of June, 1935, the City Council of Iowa City adopted a resolution to revive the City's application to PWA pursuant to which the City informed the Defendant Ickes and PWA that it desired only a grant of 45% of the cost of labor and material in connection with the proposed municipal plant project, the remaining cost to be defrayed by the issuance of bonds to be sold to some purchaser other than PWA.

Plaintiff is informed, and believes, and therefore alleges, that in pursuance of such illegal plan and undertaking PWA, acting through Defendant Horatio B. Hackett, on or about the 7th day of October, 1935 entered into an undertaking with the City of Iowa City in the form of a grant agreement, a copy of which is attached hereto under mark of Exhibit "C" and by this reference made a part
22 hereof, under the terms of which PWA offered to make an outright grant of 45% of the cost of the project, such grant, however, not to be in excess of $413,000; that the terms and conditions under which said grant will be extended are determined by Defendant Ickes and, as prescribed in said grant agreement, are set forth in PWA Circular D dated September 20, 1935, a copy of which is attached hereto marked Exhibit "D" and by this reference made a part hereof.

Paragraph XIIb.

The City of Iowa City, Iowa, is wholly without authority to establish a municipally owned and operated electric light and power plant and distribution system without obtaining the requisite authority therefor from the voters of said City at an election duly called and held. An election was held in said City on the 17th day of April, 1934, at which election the following question was submitted to the voters:

"Shall the City of Iowa City, Iowa, establish, erect, extend, maintain and operate within or without its corporate limits, an electric light and power plant, with all the necessary poles, wire, machinery, apparatus and other requisites of said plant; the maximum amount which may be
23 expended for the establishment, construction or ac-

quisition of such plant shall be $917,000 to be paid for out of the future earnings of said plant, and as provided by Sections 6134-d1 to 6134-d7, inclusive, of the Code of Iowa, 1931, as amended by Senate File No. 103, Chapter 74-55 G. A. Special, passed by the 45th General Assembly, Special Session?"

At such election there were cast a total of 5763 votes, of which 2804 were in the negative and 2959 were in the affirmative. The affirmative votes cast amounted to but 51% of the total votes cast. Said election failed to provide the requisite authorization to establish such a plant for the reasons set forth in Paragraph XVI hereof. However, independent of any claims of illegality with respect to such authorization, Plaintiff asserts the fact to be that the offer and prospect of a grant was the inducing cause of a favorable vote on the question submitted; that without such grant, or the prospect of such grant, no authorization to construct any municipally owned plant would have been given by the voters, the instigation of Defendants and the hope of obtaining a Federal gift being the sole cause of the present apparent desire on the part of certain members of the City Council, officials and voters of said City to construct said project; that without said grant the City of Iowa City would not and could not finance the establishment and construction of said plant. Plaintiff therefore alleges that unless the City of Iowa City receives said grant, it will not proceed with the construction of the proposed project.

Paragraph XIII.

The City of Iowa City has, in return for such grant and as a condition of its being made, become obligated and has undertaken and agreed, or is about to become obligated or to undertake or agree, that the proceeds of such grant will be made available to it upon requisition in such amounts as Defendant Ickes deems sufficient from time to time, and shall in no event be available beyond the amount which in the judgment of Defendant Ickes is needed to complete the project; that the proceeds of the bonds and grant shall be deposited by the City of Iowa City in such class of banks as Defendant Ickes chooses; that such

proceeds shall be expended by the City of Iowa City only as Defendant Ickes consents; that all details of plans, drawings, construction contracts, engineering, supervision, inspection, etc., shall be according to the will of Defendant Ickes; that all work on the project shall be done under the regulation of Defendant Ickes; that all contractors shall be equipped with bonds and insurance as Defendant Ickes desires; that Defendant Ickes may cancel the contract with the City of Iowa City at any time he wishes, if in his opinion the City of Iowa City has unreasonably delayed in carrying out any of its duties; that the aforesaid funds shall be available to the City of Iowa City only subject to the power of Defendant Ickes to withhold them if he is not satisfied that the City of Iowa City has complied with
26 all provisions of the agreement; and that in other respects the will of Defendant Ickes shall control the City of Iowa City's action, even to the extent of the naming of the project. Furthermore, the Defendant Ickes, or his agents, will be permitted to fix, and from time to time change, minimum rates of pay and minimum hours for all persons employed on such construction, to enforce employment preferences other than such preferences as are provided for under the laws of the State of Iowa, to designate agencies through which workmen may be employed, to require disclosure to PWA of all information which PWA may desire with respect to such construction work, and in other ways to regulate the construction of such plant and distribution system. That the proceeds of said grant will not be made available to the City of Iowa City until the conditions prescribed by law and by the regulations of the Federal Emergency Administration of Public Works are
27 complied with.

Paragraph XIV.

While the procedure pursued by PWA, Defendant Ickes, and his agents in passing upon applications of municipalities for loans and/or grants does not provide for a hearing on the part of those whose property and rights will be injured or destroyed through the authorization and construction of such municipal systems, Plaintiff requested and sought a hearing before PWA relative to said application of the City of Iowa City. Representatives of Plaintiff were

accorded the privilege of making oral protests not before PWA or before any of the Defendants, but before a single employee whose relationship to PWA was not disclosed, and such protests were made. Plaintiff has, however, constantly been denied the privilege of a hearing before PWA or any of the Defendants. Nevertheless, Plaintiff
28 filed with PWA a comprehensive written protest against the approval of the application of the City of Iowa City. There is no further board, agency or official of the United States to whom Plaintiff may apply to prevent the consummation of the project in the City of Iowa City. Plaintiff has exhausted all administrative remedies which it could possibly have to prevent such action. Notwithstanding Plaintiff's protests of the application of the City of Iowa City, Plaintiff is informed, believes and avers the facts to be that such protests were given no consideration whatsoever by PWA, but that for no purpose other than that of driving down Plaintiff's rates and destroying Plaintiff's business in accordance with the aforesaid plan of PWA and upon findings that the action of PWA would, in fact, destroy and drive out Plaintiff's business in the City of Iowa City, PWA approved the public works project for said City to be carried out under the pretended grant agreement as hereinbefore set out.

Paragraph XV.

If Defendants are permitted to consummate said unlawful plan and arrangement and make such pretended grant to the City of Iowa City Plaintiff is informed and be-
29 lieves, and therefore alleges, that Defendants will be successful in their attempt to instigate and encourage other municipalities which, or the inhabitants of which, are now served by Plaintiff to apply for loans and grants to construct duplicating and/or competing electric plants and/or distribution systems, and the Defendants will authorize and make to said cities and towns loans and grants for such purposes, and that electric plants so financed and constructed will be operated in ruinous competition with Plaintiff. Plaintiff's business consists of the business done by it in the City of Iowa City and in adjacent incorporated and unincorporated towns and in the rural areas served by it, all of which are served from its interconnected gen-

eration and transmission system. Each community served by Plaintiff enables Plaintiff better to serve the remaining communities, and none may be withdrawn without impairment of Plaintiff's ability to serve the remainder of its customers or without substantially increasing the cost of service to them. The loss, therefore, of a number of local businesses would destroy or render useless much of Plaintiff's modern efficient and valuable properties, and would thereby cripple Plaintiff in the exercise of its rights, privileges and duties under its franchises. In this manner if Defendants are permitted to carry out their plans Plaintiff's business will be completely destroyed and its property rendered useless and valueless, and Plaintiff will be forced into bankruptcy.

30

Paragraph XVI.

Proceedings for the authorization of a municipally owned electric light and power plant and distribution system in the City of Iowa City depend for validity upon the legality of an election held for such purpose on the 17th day of April, 1934, and upon the legality of the authorization given at such election. Such proceedings are wholly defective in that:

(a) No action was taken by the City Council to establish a municipally owned electric light and power plant and distribution system until April 5, 1935, and the authority, if any, given the City Council of Iowa City to establish such plant by the election of April 17, 1934 expired before the enactment of any ordinance establishing said plant when the City Council failed to establish said plant within a reasonable time after said election but on the contrary tabled the ordinance proposed for that purpose.

(b) The election of April 17, 1934 conferred no authority for the establishing of a municipally owned electric light and power plant and distribution system, or for the issuance of bonds therefor, because of the insufficient affirmative vote as required by Section 1171-d4 of the 1931 Code of Iowa.

(c) No valid election has ever been legally called by the filing of legal and proper petitions, or otherwise, for the purpose of submitting to the qualified electors of the City of Iowa City any question of establish-

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ing a municipally owned electric light and power plant and distribution system, or for the purpose of issuing bonds therefor.

(d) No such legal notice of the election of April 17, 1934 was ever given as by law provided.

(e) Such notice of the election of April 17, 1934 as was given was never legally authorized, and the election held pursuant thereto was a nullity.

(f) The authorization for the election of April 17, 1934, if valid for any purpose, conferred authority only to establish a plant and distribution system to be paid for solely out of future earnings, and no such plant and distribution system may validly be established except in strict accordance with the terms and provisions of the petitions for such election.

(g) The question submitted to the voters of Iowa City at the election of April 17, 1934 was void for duality, repugnancy, ambiguity and confusion, and conferred no legal authority for the establishing of any municipally owned electric light and power plant and distribution system.

(h) The preelection inducements to voters to cast a favorable vote for the project upon the representation that if the project was approved the power existed to acquire Plaintiff's plant and/or distribution system voided the election and rendered it a nullity.

(i) The authority, if any, conferred by the election of April 17, 1934, did not authorize the acceptance of
32 any grant of Federal funds to defray any part of the cost thereof.

(j) The City of Iowa City has no power under the laws of Iowa, either with or without an election, to borrow from the Public Works Administration, or to accept a grant or gift of the Federal Government, or the Federal Emergency Administration of Public Works, and particularly a grant upon the terms and conditions proposed.

(k) Acceptance of the grant on the conditions imposed, and required to be agreed to, or required to be adhered to as a condition of any such grant, constitutes the abrogation and surrender and the delegation to Defendant Ickes and to PWA and its officials of sovereign legislative powers of the State of Iowa delegated by the legislature to the City, but not, under the Constitution of Iowa, delegable by it;

and the imposition and carrying out as an executive or administrative act of said conditions by Defendant Ickes and the officials of PWA constitutes an invasion by the Federal Government and its executive department and administrative officers of the reserved powers of the state in violation of the Tenth Amendment to the Constitution of the United States.

Paragraph XVII.

Plaintiff has repeatedly requested information as to the status of the City of Iowa City's application for a loan and/or grant, but was wholly unable, except as hereinafter stated, to procure any evidence with respect to the allowance of said application, or of the receipt by said City of any proceeds of any such grant from the public records of the City of Iowa City or otherwise. In pursuance of
33 the conspiracy hereinbefore set forth said City, and the Defendant herein, have withheld all possible information respecting said application or the remitting by PWA, or the receipt by said City of any proceeds of any such grant. In a collateral proceeding in which said City was a party, pending in the District Court of the State of Iowa in and for Johnson County, counsel for said City on the 18th day of November, 1935, produced in open Court, and for the first time made available to Plaintiff, the offer of PWA, a copy of which is annexed hereto as Exhibit "C", and produced a check or remittance in the amount of $28,140 dated on or about the 28th day of October, 1935, representing the first advance grant payment by PWA in connection with said project.

Paragraph XVIII.

The business of furnishing and providing electric current in and to the City of Iowa City, and in and to the surrounding communities and territory within Johnson County, Iowa, in which Plaintiff is wholly engaged and in which it is threatened and intended by Defendants that said City of Iowa City may be enabled to engage, through the unlawful disbursement of public funds of the United
34 States, is and will be wholly carried on and transacted within the confines of the State of Iowa, and does not in any respect constitute commerce with foreign nations or among the states within the provisions of Arti-

cle I, Section 8, Clause 3, of the Constitution of the United States.

Paragraph XIX.

The proposed project is not for a national or other public purpose for the following reasons:

(a) There is no need for the construction of an electric generating plant or electric distribution system in the City of Iowa City since any and all possible need for electric energy and service in said locality is now and for a long time past has been and will continue to be fully and adequately provided and supplied by private capital and enterprise and by means of capital invested in and represented by Plaintiff's existing plant and equipment which it operates as a public utility subject to the laws of the State of Iowa.

(b) The proposed project is solely a local project confined to the immediate locality of the City of Iowa City, and for the alleged benefit solely of certain consumers of electricity in said locality, and is not, and cannot be, for the purpose of serving or providing any benefit for the general public of the United States, and will not, and cannot, affect the general welfare of the United States.

(c) The expenditure of Federal funds for such project can inure only, if at all, to the private benefit of the consumers of electricity in and about the City of Iowa City, and to the said City in its private and commercial capacity, and said expenditure is solely for a private purpose.

(d) The only possible further benefit which could be served or promoted by the expenditure of Federal funds for the proposed project is the private individual benefit to manufacturers and producers of materials, equipment and electric appliances to be purchased, acquired and constructed thereby, and to the builders, contractors and providers of labor to be expended in the assembly and construction thereof, and if any secondary or ultimate or incidental benefit should result from the stimulation of industry and increase of profits in the manufacture, sale, assembly, transportation and installation of materials entering into the construction of said project, the same will be merely secondary, remote and contingent benefit and the

expenditure of public funds for such purpose will constitute a disbursement and expenditure for the private gain and profit of such manufacturers, producers, sellers, builders and contractors.

Paragraph XX.

The funds employed in making such grants for the construction of municipal utilities, and particularly the funds to be employed for the grant to the City of Iowa City, are largely if not wholly funds borrowed by the United States.

Paragraph XXI.

36 The contemplated and threatened grant of public funds of the United States to the City of Iowa City is sought to be made and justified solely by virtue of the provisions of Title II of the National Industrial Recovery Act (June 16, 1933, ch. 90, 38 Stat. 195) and/or the Emergency Relief Appropriation Act of 1935 (April 8, 1935, ch. 48, 49 Stat. 115), and executive orders and regulations of the President of the United States claimed to be promulgated pursuant thereto, and by actions of the defendants claiming to act under or by authority of one or more of said statutes, executive orders and/or regulations.

Paragraph XXII.

The threatened grant and disbursement of public funds of the United States and delivery thereof to said City for the purposes and uses herein set out are illegal and unauthorized and contrary to the scope and the authority of Title II of the National Industrial Recovery Act and of the Emergency Relief Appropriation Act of 1935, because

(a) Section 202 of the National Industrial Recovery Act provides that the Public Works Administrator shall prepare a comprehensive program of public works. Section 203 of said Act provides that said Administrator
37 may construct and finance or aid in the construction and financing of any public works project "included in the program prepared pursuant to Section 202." No such comprehensive program has ever been prepared and, as publicly announced by PWA, the only program ever prepared is the sum of the particular projects which PWA has at any given time approved. This does not constitute the

preparation of a comprehensive program as required by said Section 202 but is a mere catalogue of action taken. The proposed project, therefore, forms no part of such a comprehensive program. Said project is so situated and located that it can form no part of any national project or program of national public works, and therefore the inclusion or attempted inclusion thereof in any such contemplated or projected program would be unreasonable, capricious, arbitrary and in excess and outside the scope of the purposes, powers and authority provided in Sections 202 and 203 of the National Recovery Act.

38 (b) The proposed project is not reasonably designed or capable of increasing employment quickly, or relieving unemployment, but on the contrary will tend to increase and cause greater unemployment among employed persons, and is not a reasonably appropriate means of accomplishing any increase of employment or relief of unemployed persons. Plaintiff is informed, believes, and so alleges, that of such unemployment as exists in the City of Iowa City, or its vicinity, there is virtually none among persons who can be employed on projects of this sort. The project will require almost altogether skilled workmen, and has no reasonable relation to the unemployment situation in Iowa City, Iowa. Moreover, the project will inevitably cause permanent unemployment of many, and eventually all, of those now in Plaintiff's employ and engaged in its electrical department.

(c) Section 202 of the National Industrial Recovery Act by particularly enumerating in the list of public
39 works for which public money may be loaned and granted "development of water power" and "transmission of electrical energy" has excluded projects such as the proposed steam operated generating plant and electric distribution system. No other provision of said Act authorized a municipal generating plant or electric distribution system of such a type or character. Furthermore, even if authority to make such a loan and grant were conferred by said Act, such authority expired on June 16, 1935 by virtue of Section 201 (d) of said Act, which authority is not extended by the aforesaid Emergency Relief Appropriation Act of 1935.

(d) Said project is wholly useless and wasteful in that it duplicates and, to the extent of such duplication, destroys Plaintiff's existing adequate, reasonable and satisfactory system. The result of the construction of the proposed project will be to interfere with instead of to "promote the fullest possible utilization of the present productive
40 capacity of industries" as required by Section I of the National Industrial Recovery Act. Should Plaintiff be deprived of its business within the City of Iowa City and be compelled to remove its poles, lines and other equipment therein, Plaintiff would be incapacitated from rendering service to the consumers in the adjacent localities at rates which such consumers could possibly afford to pay. The result would, therefore, be the loss of service to these consumers, and the rendering idle, useless and valueless of additional property of Plaintiff.

(e) Neither the National Industrial Recovery Act nor the Emergency Relief Appropriation Act of 1935 authorizes the making of loans and grants to finance competitive projects destructive to lawful private industry already established and adequately serving the public. The making of loans and grants for such a project as herein contemplated tends to increase unfair competitive practices
41 instead of to "eliminate unfair competitive practices" as required by Section 1 of the National Industrial Recovery Act. Competitive projects are likewise contrary to the rule prescribed by the President of the United States under the National Industrial Recovery Act as set forth in Circular No. 1 which provides that "projects for the transmission of electric energy into territory not now served" will be preferred for grants.

(f) Said project is not authorized by the Emergency Relief Appropriation Act of 1935 in that in accordance with Subsection (g) of Section 1 loans and grants are only authorized where in the determination of the President of the United States not less than 25% of the aggregate loan and grant is to be expended for work, and Plaintiff is informed, and believes, and therefore alleges, that this test has not been applied, in that the President has not determined, with respect to the proposed project, or made any findings that not less than 25% of the aggregate of
42 any loan and grant is to be expended for work. The

amount of local labor to be employed is insignificant. In the application of the City of Iowa City for a loan and grant (Plaintiff's Exhibit "A" Page 12) it is stated:

"It is estimated that this project will employ approximately the equivalent labor of sixty men for twelve months."

(g) The acceptance of the proposed grant by the City of Iowa City is contrary to the statutes and laws of the State of Iowa for the reasons set forth in Paragraph XVI, and particularly Subsections (f), (i), (j), and (k) thereof.

Paragraph XXIII.

If said project should be held to be within the scope of the National Industrial Recovery Act or of the Emergency Relief Appropriation Act of 1935, then such Acts, and the proposed grant attempted to be made in reliance thereon, are unlawful, unconstitutional and void for the following reasons:

(a) Neither of said Acts nor the grant attempted to be made in reliance thereon are authorized by any power delegated to the Federal Government by the Constitution;

(b) The National Industrial Recovery Act and the
43 Emergency Relief Appropriation Act of 1935 severally attempt to extend the Federal power over matters of intrastate commerce and state police power and regulation of public utilities in contravention of the Tenth Amendment to the Federal Constitution and constitute the taking of Plaintiff's property in violation of the Fifth Amendment to the Federal Constitution;

(c) Such Acts are unlawful, unconstitutional and void as failing to indicate or establish any adequate legislative standard to guide the administrative officers charged with the administration of said Acts, but on the contrary attempt unlawfully to delegate legislative power to the President of the United States, and such administrative officers, including the Defendants herein; and to authorize the President and said officers to promulgate such rules and regulations having the force of law as will in his or their judgment best provide for the general welfare, in violation of Article I, Section 1, Article I, Section 8, Clauses 1, 2 and 18, and Article II, Section 1 of the Constitution of the United States. The attempted extension of the Federal

Emergency Administration of Public Works by Sec-
44 tion 12 of the Emergency Relief Appropriation Act of 1935 is likewise an unlawful attempt to delegate legislative authority in that it provides that said Administration "is authorized to perform such of its functions under said Act and such functions under this joint resolution as may be authorized by the President", and further that all money appropriated by said Act is "to be used in the discretion and under the direction of the President," and no standard or guide of any kind is laid down in said Act for the exercise of such discretion.

(d) Said Acts are severally unconstitutional and void in that they fail to provide for any hearing for persons whose rights will be injured and whose property will be taken by the action of the defendants, and thereby deny due procees of law as a matter of procedure in violation of the Fifth Amendment to the Federal Constitution.

(e) The funds of the United States available and
45 to be used for the Project herein described are borrowed funds. Article I, Section 8, Clause 2, of the Constitution, which grants to Congress power to borrow money, confers no authority to expend such borrowed funds, nor is such authority conferred by any other section of the Constitution, for the purpose or in the manner herein alleged. Nor does Article I, Section 8, Clause 1, of the Constitution which grants to Congress power to collect taxes, confer authority to expend funds so raised for the purpose or in the manner herein alleged. Furthermore, said projects will not promote the general welfare of the United States, but are exclusively for the local and private welfare of the consumers of electricity in said Cities. Said
46 projects will, if anything, be to the general detriment of the United States by reason of creating an unnecessary and wasteful duplication of electricity distributing facilities, and causing unemployment and loss of invested capital. Such secondary and incidental benefit, if any, as might result from the manufacture, sale, assembly and installation of wires, cables, transformers, etc., would be incidental, remote and contingent, depending upon the intermediate conduct of manufacturers and sellers of such articles and of those who contract for their installation, and the expenditure of funds for such purpose would be

merely for the private gain and profit of such manufacturers, sellers and contractors.

47 Paragraph XXIV.

The proposed action by Defendants in carrying out said arrangement with the City of Iowa City will aid and abet said City in violating the laws and Constitution of the State of Iowa as herein more particularly alleged in Paragraph XVI, and will, therefore, be unlawful and void. The proposed grant is, and will be, invalid and unlawful as an illegal expenditure of Federal funds by the Defendants, and, therefore, the City will be obligated immediately to refund to the Federal Government the amount of the grant so illegally made and accepted by it. The City will thereupon become indebted to the Federal Government without warrant of law and in violation of the constitutional and statutory provisions of the State of Iowa and in violation of the authorization under which the City is proposing to establish a municipal electric light plant and distribution system.

Paragraph XXV.

Plaintiff is informed and believes and therefore alleges that the Defendants and said City are, in accordance with the aforesaid unlawful arrangement or understanding be-
tween PWA and said City combining and conspiring
48 together to consummate their joint design of constructing and operating said project and to injure Plaintiff as hereinabove alleged, and will, unless restrained by this Court, immediately proceed to do so. Said City will immediately present to said Defendants, or one or more of them or their agents, additional requisitions of money to be furnished pursuant to said arrangement, and said Defendants, or one or more of them, will, unless restrained by this Court, make such funds available for the construction of said project by withdrawing the same from the Treasury of the United States, and will immediately direct that they proceed with such construction in pursuance of said unlawful plan and arrangement.

Paragraph XXVI.

If Defendants, or any of them, shall carry out the provisions of said unlawful arrangement or understanding

with the City of Iowa City or do any or all of the Acts threatened by them as hereinbefore alleged, the property right of Plaintiff to enjoy its franchises and properties free from destructive competition brought about by unlawful means and to conduct its business free from unlawful interference will be immediately invaded and destroyed.

49 The value of the franchises and business of the Plaintiff and of the tangible and intangible property acquired and used therein and of the private funds invested and risked therein represented by the capital stock and obligations of Plaintiff will immediately be greatly damaged and impaired and will finally be rendered utterly worthless. Plaintiff, as a taxpayer, will be specially injured as hereinbefore alleged and will have been and in the future will be subject to the deprivation of its property by taxation for a purpose without warrant in law or in the Constitution of the United States and in violation thereof. Plaintiff's right as a taxpayer in said City of Iowa City that said City shall not be forced to violate the laws of the State of Iowa and shall not be forced to enter into relationships with others, specifically the Defendants herein named, who are without authority to enter into such relationships, will be violated. By reason of the foregoing Plaintiff would suffer the loss of its property without due process of law contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States.

Paragraph XXVII.

50 Plaintiff alleges that all of the acts and proceedings of the Defendants hereinabove referred to, both consummated and threatened, are illegal and void, and that if Defendants are permitted to carry into effect their plan and scheme for the erection of a municipally owned and operated electric light and power plant and distribution system in the City of Iowa City it will constitute an illegal and unlawful invasion of the rights of this Plaintiff and will result in illegal and unlawful competition and in the confiscation and destruction of Plaintiff's property located within and adjacent to said City and now used and useful in the performance of the public service of furnishing electrical energy to the inhabitants of said City and the territory now served by the Plaintiff, and Plaintiff will suffer

immediate and irreparable injury, loss and damage not susceptible of definite appraisal or ascertainment for which it has and can have no plain, speedy and adequate remedy at law.

Paragraph XXVIII.

The City of Iowa City and the members of its governing body are not made parties defendant hereto because they are without the jurisdiction of this Court and service of process cannot be had upon them in the District of
51 Columbia, and they are not necessary parties to this action.

Paragraph XXIX.

Plaintiff alleges that it is futile to ask said City to rescind its unlawful arrangement and understanding with PWA and the Defendants, inasmuch as Plaintiff has protested to said City against such arrangement and understanding but it persists in its determination to consummate the same.

Paragraph XXX.

The said City of Iowa City has, as hereinbefore alleged, announced its intention to join with Defendants in the immediate consummation of the said project. Plaintiff is informed and believes and therefore alleges that unless defendants are immediately restrained from doing so, they will at once perform the acts hereinbefore alleged. Plaintiff is further informed and believes and therefore alleges that the giving of notice of application for a restraining order would precipitate such unlawful acts and there would immediately result all the mischief complained of by Plaintiff herein and would cause Plaintiff immediate and
52 irreparable injury, loss and damage, whereas restraint of the doing thereof until disposition of Plaintiff's application for temporary injunction has been made would result in no detriment or injury to the defendants.

WHEREFORE, the premises considered, the Plaintiff prays:

(1) That process issue against the Defendants requiring them to answer this bill (but not under oath or affirmation, the benefit whereof is hereby expressly waived by the Plaintiff).

(2) That this Court grant Plaintiff a temporary restraining order against Defendants, and each of them, en-

joining them and each of them, their officers, agents and all persons acting in the aid of said Defendants and their successors in office, from doing any further act or thing to carry out any of the provisions of said unlawful arrangement with said City of Iowa City, and from in any manner aiding in the construction or from financing the construction of such electric generating system in the City of Iowa City, and more specifically from entering into any arrangement or agreement with said City for the purpose of constructing or financing the construction of said project in said City, and from honoring any requisition and
53 from transferring, lending, giving or disbursing to said City any funds whatsoever for said purpose, and from taking any step whatever designed to aid or facilitate the financing or construction of said project, such restraining order to be effective only until the matter of Plaintiff's application for a preliminary injunction shall be disposed of.

(3) That after notice and hearing, the Court enter a preliminary injunction to the same effect.

(4) That upon final hearing the Court enter a final order and decree to the same effect.

(5) And for such other and further relief as to the Court may seem meet.

IOWA CITY LIGHT AND POWER COMPANY
By R. B. MACDONALD
Its President

54 CHARLES D. WATERMAN
WAYNE G. COOK
Davenport, Iowa
CHARLES M. DUTCHER
Iowa City, Iowa
THOMAS K. HUMPHREY
Chicago, Illinois
JOHN S. BROOKES, JR.
WALTER B. GUY
917-15th St. N.W.
Edmonds Building,
Washington, D. C.
Solicitors for Plaintiff

55 STATE OF IOWA,
Scott County, ss:

R. B. MacDonald being duly sworn deposes and says that he is President of Iowa City Light and Power Company, a corporation organized under the laws of the State of Delaware, the Plaintiff named in the above entitled cause; that he has authority to make this affidavit in behalf of said corporation; that he has read the foregoing original Bill of Complaint by him subscribed and knows the contents thereof, and that the statements therein made are true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he verily believes the statements to be true.

R. B. MACDONALD

Subscribed and sworn to before me this 7th day of December, 1935.

JAMES J. LAMB
(Seal) *Notary Public in and for Scott County, Iowa.*

My commission expires July 4, 1936.

56 *Application to Federal Emergency Administration of Public Works* by *City of Iowa City, Iowa*

A Loan to Finance A Municipal Light and Power System
Amount $917,000.00

January 8, 1934

Exhibit "A"

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58 Officers: E. B. Raymond, Treasurer; Wm. J. White, Assessor; Thos. E. Martin, Solicitor; J. F. Sproatt, Engineer and Street Commissioner; Harold W. Vestermark, Police Judge; W. M. Bender, Chief of Police; Herman Amish, Fire Chief; Dr. Isom A. Rankin, Health Officer; Edith Dautremont, City Nurse; C. G. Sample, Diary Inspector; C. A. Kutcher, City Inspector; M. H. Maher, Plumbing Inspector.

Aldermen-at-Large: James E. Stronks, J. Van der Zee. First Ward, M. J. McGuan; Second Ward, S. M. Woodward; Third Ward, Edw. W. Sybil; Fourth Ward, John P. Memler; Fifth Ward, Roscoe B. Ayers.

City of Iowa City

Harry D. Breene, Mayor

Geo. J. Dohrer, Auditor and Clerk

Iowa City, Iowa

January 8th, 1934

F. F. Hopkins, Engineer
State Advisory Board
Federal Emergency Administration of Public Works
Federal Building
Des Moines, Iowa

Gentlemen:

The City Council of Iowa City, Iowa, by a unanimous resolution passed at the regular meeting January 5th, 1934, have authorized and directed the Mayor and City Clerk to file an application with the Federal Emergency Administration of Public Works for a loan and grant for the purpose of constructing a municipal light and power system

and for acquiring or constructing a distribution system for electricity for Iowa City, Iowa.

Therefore in accordance with the said resolution we are herewith presenting such application and filing the same for your consideration.

Respectfully submitted,

H. D. BREENE,
Mayor, Iowa City, Iowa

GEO. J. DOHRER,
City Clerk.

59 January 8, 1934

Application of Iowa City, Iowa for Loan of $917,000.00 to Establish a Municipal Light and Power System

I. General

Circular #2 of the Federal Emergency Administration of Public Works has been followed in preparing this application and the data presented in accordance therewith. The correspondent will furnish additional data promptly upon request. Exhibit #1—"Report on Municipal Light and Power System for City of Iowa City, Iowa", contains additional information.

II. Summarized General Information

a. Applicant: City of Iowa City, Iowa, organized April 6th, 1853, under provisions of Chapter 42, Code of Iowa, 1851.

b. Correspondent: Harry D. Breene, Mayor, Iowa City, Iowa.

c. Attorney: Thos. E. Martin, Iowa City, Iowa.

d. Consulting Engineer: Walter E. Schwob, Iowa City, Iowa.

e. Population:

1910	10,091
1920	11,267
1930	15,340

60 *III. The Loan Requested*

61 *III. The Loan Requested*

(a) *Amount*

The amount of the estimated cost of this project is $917,000.00 and a loan and grant are requested of this amount.

(b) *Security*

The securities to be offered will be pledge warrants or pledge orders as provided for under the laws of the State of Iowa.

(c) *Period of Loan*

Fifteen years

Schedule of Retirement—Steam Plant Investment

Date	Investment	Retirement Fund	4% Interest	Retirement and Interest
1935	$917,000.00			
1936	872,000.00	$ 45,000.00	$36,680.00	$81,680.00
1937	825,000.00	47,000.00	34,880.00	81,880.00
1938	776,000.00	49,000.00	33,000.00	82,000.00
1939	725,000.00	51,000.00	31,040.00	82,040.00
1940	672,000.00	53,000.00	29,000.00	82,000.00
1941	616,500.00	55,500.00	26,880.00	82,380.00
1942	558,500.00	58,000.00	24,660.00	82,660.00
1943	498,000.00	60,500.00	22,340.00	82,840.00
1944	435,000.00	63,000.00	19,920.00	82,920.00
1945	369,000.00	66,000.00	17,400.00	83,400.00
1946	300,000.00	69,000.00	14,760.00	83,760.00
1947	228,000.00	72,000.00	12,000.00	84,000.00
1948	153,000.00	75,000.00	9,120.00	84,120.00
1949	78,000.00	75,000.00	6,120.00	81,120.00
1950		78,000.00	3,120.00	81,120.00
		$917,000.00		

62 (c) *Period of Loan—Continued*

The above schedule proposes to retire the original indebtedness over a period of fifteen years. It is assumed that the construction period will require about two years, including the completion of final plans and specifications, letting of bids and actual construction. For this reason it is assumed the actual operation of the system, under municipal administration, would begin about January 1, 1936 and the first maturity of bonds would take place December 31, 1936.

(d) *Application of Grant*

If the grant of 30 per cent of the estimated cost is made, the preferred method of applying the same would be to

reduce the amount of securities issued to the cost of the project less the grant, as set forth in Circular No. 1, Section 6, Case 5.

(e) *Schedule When Funds Needed*

This is indefinite for this project as the final plans and specifications must be completed.

63 *IV. The Project*

64 *IV. The Project*

(a)—General Description

Iowa City is now served with electricity by the Iowa City Light and Power Company, a United Light and Power Company subsidiary. The company terminates its 25-year franchise on January 13, 1934. The company's generating station is located in the town of Coralville, a village approximately two miles west of Iowa City. Here, company maintains a steam plant and a Hydro-electric plant combined and in addition interchanges power through an interconnection with the Iowa Electric Light and Power Company.

The energy is generated at 2,300 volts two phase, sixty cycle and is stepped up through a substation to 13,200 volts for transmission to Iowa City where it is again stepped down to 2,300 volts two phase for use on the City distribution system.

The service given by the Iowa City Light and Power Company has been excellent. The quality of service being due to adequate equipment, high standards of construction and competent operation. To produce the same quality of service with a municipally owned plant can be accomplished only by the adoption of similar standards. This report proposes that the City of Iowa City will operate its light and power department as efficiently as though operated by a private corporation. It is further proposed that the use of electricity will be promoted as vigorously with municipal as well as with private ownership and that the same high standards of construction and operation will be maintained as now exist on the property of the Iowa City Light and Power Company.

There are many and diverse avenues leading to the solution of the municipal electric light and power problem for the City of Iowa City, Iowa; each avenue has its
65 own peculiar advantages and proponents; each its

individual problems. Below are presented some logical approaches to the problem.

1. Construct a complete steam plant and distribution system and generate all energy used.

2. Construct a complete Diesel plant and distribution system and generate all energy used.

3. Purchase electricity over the hours of the lighter load and generate with a steam plant over the hours of the heavy load.

4. Same as No. 3, except generate with Diesel engines over heavy load period.

5. Purchase all electricity used from some reliable and adequate source of power.

6. Purchase all electricity used and maintain an adequate Diesel standby plant which can be expanded into a complete plant in a reasonable short time.

7. Purchase the complete property of the Iowa City Light and Power Company.

This report deals with the construction of a complete power station located in the City of Iowa City and the distribution of electricity either, by the construction of a new distribution system complete, or by using the present system through purchase from the Power Company. It is recommended that the matter of purchasing the present distribution system of the Iowa City Light and Power Company be thoroughly considered because of the additional expense of building a conflicting system where it is necessary to maintain continuous service.

66

The operation of the plant is considered in this report as being a wholly isolated plant without interconnection for exchange of power but maintaining the same emergency connection with the power station of the University of Iowa.

The City and its Growth

Iowa City is one of the older cities of the state and the 1930 census gave the population of the city as 15340. It is the home of the University of Iowa which makes the city the educational center of the state and has very little industrial development. The city has enjoyed a steady though not rapid growth as shown in the following table. The probable future growth is estimated as follows:

Population Growth of Iowa City

Date	Population
1890	7,016
1895	7,526
1900	7,987
1905	8,497
1910	10,091
1915	12,033
1920	11,267
1925	15,289
1930	15,340
1935	16,350
1940	16,800
1945	17,400
1950	18,550
1955	19,900
1960	20,700

67 *IV. The Project*

(b) Estimate of Cost—Preliminary

(1) Preliminary expenses	$3000.00
(2) Cost of land	5000.00
(3) Construction Costs	

Building and Structures

Power Plant Building
(Brick building with steel)
(Frame concrete foundation)

	Labor	*Material*
Boiler Room 157,100 cu. ft.	$13,200.00	$19,800.00
Turbine Room 148,000 cu. ft.	16,650.00	20,350.00
Total Power Plant building	$29,850.00	$40,150.00
Cooling water intake and discharge	$ 1,800.00	$ 4,200.00
Crane	450.00	4,550.00
Trackage	300.00	1,200.00
Concrete smokestack	4,000.00	6,000.00
	$36,400.00	$56,100.00

Boilers and Equipment		
3—300 HP boilers, 400# pressure, 750 degrees temperature	$ 5,500.00	$ 33,000.00
3—Superheater	600.00	3,900.00
3—Soot blower	300.00	1,200.00
3—Underfeed stokers & water wells	2,000.00	13,000.00
Piping and covering	7,000.00	14,000.00
Boiler feed pumps, heaters and softener	500.00	4,200.00
Coal and ash handling	2,000.00	12,000.00
Draft fans	500.00	4,500.00
Brick settings for boilers	3,000.00	6,000.00
Breechings	300.00	1,500.00
Flow meters and miscellaneous instruments	300.00	3,000.00
Coal storage bunkers	3,000.00	11,000.00
Miscellaneous material and equipment	1,400.00	6,300.00
Total	$26,400.00	$113,600.00

68 *Generating Equipment*	*Labor*	*Material*
2—300 KW turbines	$10,000.00	$135,000.00
2—Condensers and auxiliaries	4,000.00	31,000.00
Circulating water piping	2,000.00	4,000.00
2—Foundations	4,000.00	4,000.00
Piping	5,000.00	10,000.00
Generator Connections	700.00	2,000.00
Miscellaneous equipment		3,600.00
	$25,700.00	$189,600.00

Control Equipment		
Switchboard—12 panel and equipment	$ 4,000.00	$16,000.00
Station Light and Power equipment	700.00	1,800.00
Tools		1,500.00

Overhead Distribution System

The distribution system of the Iowa City Light and Power Company is adequate to provide service to all electric consumers of the City. The system has been maintained in

good condition and very little deferred maintenance is in evidence. It is operated at 2300 volts, two phase, 60 cycle.

The present street lighting system in the residential sections of the city is owned by the company and under contract with the city have been furnishing all maintenance and renewal of lamps.

The distribution system in the city served 5195 metered consumers in 1932 and approximately 5160 in 1933. The low percentage of unaccounted for loss in energy can be traced directly to the fact that the system carries ample copper conductors for the connected load.

The estimated cost of a new overhead distribution system would be as follows:

69 *Overhead Distribution System*	*Labor*	*Material*
Poles and Fixtures	$15,000.00	$ 65,200.00
Conductors	20,700.00	66,180.00
Services	12,000.00	12,000.00
Transformers	5,000.00	45,200.00
Meters	10,000.00	54,120.00
Street lighting fixtures	2,000.00	12,600.00
Total Overhead System	$64,700.00	$255,300.00
Office Equipment		10,000.00
Transportation Equipment		8,000.00
Miscellaneous Equipment		4,000.00
(4) Engineering		$ 27,450.00
(5) Legal, administration and supervision.		36,850.00
(6) Interest during construction 3%		24,500.00
(7) Miscellaneous costs		6,400.00
Total Cost		$917,000.00

For Sketch Plans—See Exhibits #6 and #7

For Additional Information—See Exhibit #1 Engineer's Report.

(c) *Economic and Social Value*

70 The Economic value of the project is to furnish consumers of electricity with the lowest possible rates and to benefit from any surplus that may accrue from the earnings of the project.

(d) *Program of Development*

This project, while not a part of a larger plan or long range program of development at the present time, can be associated with the development of a central steam heating system for which any of the tentative plant locations are well adopted. The development of a central steam heating district would eliminate much of the present smoke and soot evil in the business section of the City.

(e) *Regional Planning Board*

This project has not been submitted to this Board.

(f) *Metropolitan District*

This project is not a part of a Metropolitan District, but is an Independent project.

(g) *Endorsements*

Johnson County Taxpayers League. See Exhibit 11.
Iowa City League of Women Voters. See Exhibit 12.
Petitions of approximately 700 citizens—See Exhibit 15.

(h) *Objections*

No objections on file.

(i) *Competition*

This project will not compete with any similar business as the franchise of the Iowa City Light and Power Company expires January 13, 1934.

(j) *Plans & Specifications*

71 Plans and specifications are only in a preliminary stage and would require several months time to complete. Construction can be commenced in approximately six (6) months. The project can be completed in a year and one-half after contracts have been let.

(k) *Number of Men Employed*

It is estimated that this project will employ approximately the equivalent labor of sixty (60) men for twelve (12) months.

72 *V. Revenue and Expenses*

73 (a & b) *V. Revenue and Expenses*

Electric Output in Kilowatt-hours

The following data are taken from the report of the Iowa City Light and Power Company submitted to the City Council under date of June 2, 1933. The figures shown do not correspond with the company's report for the reason that the kilowatt-hour output sold to "Other Electric Cor-

porations" has been deducted. The deduction has been made since this report deals primarily with the business in Iowa City and immediate vicinity. Such interconnection may or may not be made should the City elect to construct a power station of adequate capacity to serve its consumers. Any additional output would tend to produce more favorable operation of the power station.

Electric Output (KWH)

Deducting Sales to "Other Electric Corporation")

	KWH 1929	KWH 1930	KWH 1931	KWH 1932
Delivered to Switchboard	6,935,185	7,710,117	8,259,808	8,562,036
Sold	5,692,723	6,316,459	6,877,905	7,152,626
	1,242,462	1,223,680	1,381,903	1,409,410
Used by Company	164,025	169,978	321,455	303,602
Unaccounted for	1,078,437	1,223,680	1,060,448	1,105,808
Per cent of Output Unaccounted for	15.55%	15.99%	12.84%	12.91%

Electric Sales in Kilowatt-hours

The sales of electricity for the period 1929-32, inclusive, has been taken from the report of the Power Company of June 2, 1933. The metered sales are classified in accordance with the particular rate schedule under which the sales were made. The kilowatt hours sold are shown in the following table.

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Electric Sales in KWH	1929	1930	1931	1932
Metered Sales Residential	1,837,613	2,021,986	2,023,002	2,210,983
" " Commercial	595,510	886,726	736,118	893,171
" " Power (SUI)	23,800	6,200	16,900	7,100
Readiness to Serve—Power	1,423,546	1,522,906	1,613,013	1,518,202
" " " —Light	1,425,213	1,380,047	1,971,247	1,996,386
Post Lighting	164,622	189,538	195,518	192,410
Municipal Street Lighting	222,419	309,056	322,107	334,374
KWH Sold for Revenue—Company	5,692,723	6,316,459	6,877,905	7,152,626
Deduct Total Post and Street Lighting	387,041	498,594	517,625	526,784
KWH sold for Revenue—City	5,305,682	5,817,865	6,360,280	6,625,842

Number of Customers				
Average Number Residential meters read*	4,006	4,205	4,312	4,364
Average Number Commercial meters read	456	476	468	449
Average Number Ind. Power meters read (SUI)	1	1	1	1
Average Number Readiness to Serve—Power meters read	207	215	228	230
Average Number Readiness to Serve—Light meters read	138	139	261	277
Meters all classes not read	181	156	107	144
Average Number Electric meters in use**	4,787	4,969	5,121	5,195
Customers outside C. L.	202	223	256	270
Total meters in use	4,989	5,192	5,377	5,465

*Includes customers outside C. L.
**Does not include customers outside C. L.

75 *Probable Increase in Consumption of Electricity*

Under normal conditions the use of electricity is constantly increasing. The increase at the present time is due not so much to the connection of new consumers as to the development of new uses of electricity. The following data dealing with the number of population per consumer over the period 1930-33 shows that relative to this factor saturation has practically been reached.

Date	*Population*	*Population per Consumer*
1930	15340	2.95
1931	15800	2.94
1932	16000	2.93
1933	16100	2.96

The probable increase in consumers for future years is based on 2.95 population per consumer as shown in Table 5 following. The probable increase in KWH sold is also shown in this table.

TABLE NO. 5.

Probable Increase in Consumption of Electricity

Date	Population	Population Per Consumer	Number of Consumers	KWH sold Per Consumer	Total KWH Sold
1930	15,340	2.96	5,192	1,216	6,316,459
1931	15,800	2.94	5,377	1,279	6,877,905
1932	16,000	2.93	5,465	1,309	7,152,626
1933	16,100	2.96	5,433	1,190	6,465,258
1934	16,200	2.95	5,492	1,250	6,865,000
1936	16,400	2.95	5,559	1,370	7,615,830
1938	16,600	2.95	5,627	1,490	8,384,230
1940	16,750	2.95	5,678	1,610	9,141,580
1942	17,000	2.95	5,763	1,730	9,96[illegible]

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TABLE NO. 5 (Continued)

Probable increase in Consumption of Electricity

Date	Population	Population Per Consumer	Number of Consumers	KWH sold Per Consumer	Total KWH Sold
1944	17,250	2.95	5,848	1,850	10,818,800
1946	17,600	2.95	5,966	1,970	11,753,020
1948	18,000	2.95	6,102	2,090	12,753,180
1950	18,550	2.95	6,288	2,210	13,896,480
1952	19,200	2.95	6,509	2,330	15,165,970
1954	19,700	2.95	6,678	2,450	16,361,100

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V. Revenue and Expenses

(a & b)—continued

Revenue

The company, in the report made June 2, 1933, included a statement of revenue, operating expense and earnings for the period 1929 to 1932, inclusive. The statement is revised in this report to reflect the possible revenue of a municipally owned electric system at the same rates as the Power Company received.

The statement of revenue has been revised by deducting the amount paid to the company for post and street lighting. In adddition the item of revenue "Other Electric Corporations" has been deducted as well as the "Net Merchandise and Jobbing Revenue". The opinion expressed

in this report being that the City electric department should stand aside from the merchandising field in order to give the electric appliance dealers in the city a chance to prove that they can satisfactorily carry on an agressive load building program. If and when the dealers, with the cooperation of the municipal department, fail in their efforts to produce a reasonable amount of new business under normal conditions then it will be necessary for the City electric department to take some action relative to the retail merchandising question.

The revised statement of revenue is shown in Table No. 6.

TABLE NO. 6.

Revised Statement of Revenue

applying to

A Municipal Electric System

	1929	1930	1931	1932
Metered Sales Residential	$150,294.74	$164,538.82	$147,209.63	$158,863.18
Metered Sales Commercial	40,345.22	54,480.82	42,096.15	41,425.76
Metered Sales—Power SUI	654.50	170.50	457.88	195.25
Readiness to Serve—Power	49,016.73	53,289.56	50,999.14	48,610.30
Readiness to Serve—Light	65,731.20	61,709.48	75,517.50	77,238.90
Minimum Charges	2,670.15	2,546.53	2,672.97	2,510.20
Forfeited Discounts	2,558.30	3,017.90	3,827.99	5,077.69
Total	$311,270.84	$339,752.61	$322,771.46	$333,921.28
Less Refunds and Corrections	696.36	964.27	1,376.70	1,771.67
Total Electric Operating Revenue	$310,574.48	$338,788.34	$321,394.76	$332,149.61
Revenue per KWH Sold—City	$ 0.05854	0.05823	0.05222	.05013

78 *Estimated Total Revenue for 1933*

The total Revenue for 1932 as taken from the company's report of June 2, 1933, and applying to the operation of a municipally-owned plant is shown as $332,149.61, derived from the sale of 7,152,626 kilowatt-hours. The revenue per kilowatt-hour is then $0.04644.

The company's records show that for the first ten months of 1933 the total electric sales had decreased 9.61%, the per-

centage being based on the year 1932. The total sales of electricity by meter during 1932 are shown as 7,152,626 KWH. Assuming that the same rate of decrease would apply over the remaining two months of 1933, the estimated total sales for the year would be 6,465,260 kilowatt-hours. Further assuming that the distribution loss is 16%, which is an average loss, rather than the lower figure shown in the company's report, the kilowatt-hours delivered at the switchboard during 1933 would be approximately 7,700,000 plus 200,000 KWH used by the Company or 7,900,000 KWH.

Taking the revenue per kilowatt-hour sold as shown above for 1932, $0.04644, and applying the same to the estimated kilowatt-hours sold for 1933, 6,465,260 KWH, produces a total revenue for the year of $300,245.00. This figure will probably be somewhat less than the actual revenue for the reason that with the smaller consumption for 1933, the revenue per kilowatt-hour would be somewhat greater than the corresponding figure for 1932.

Result of Recent Rate Reduction

The result of the rate reduction recently offered to the City effective January 1, 1934, will be to further reduce the total revenue from electric sales. The company has presented certain figures showing that the annual reduction in revenue with the new schedule of rates will be approximately $49,000.00 as based on the revenue for 1932.

This revenue is shown as $332,149.61 which after
79 deducting $49,000.00 becomes $283,149.61 as the total revenue that would have been received under the 1932 sales of electricity had the new rates been in effect. The revenue per kilowatt-hour sold for 1932 would then have been $.03938 which applied to the total KWH sold in 1933 would have resulted in the total revenue for the year of $254,639.00. This represents the total revenue available provided the proposed municipally owned system would have the same schedule of rates.

Decreased Consumption of Electricity.

The decline in the use of electricity for 1933 is the result of the present period of economic readjustment and to the shortening of hours by commercial establishments. It is believed to be temporary and the actual period of such

decline should not be of long duration especially with the reduction in rates after January 1st, 1934 which will tend to stimulate the sale of electricity once more.

80 *Probable Future Revenue*

Date	Total Revenue
1933	$254,639.00
1934	271,854.00
1935	285,798.00
1936	299,759.00
1937	313,897.00
1938	327,991.00
1939	341,180.00
1940	355,425.00
1941	369,733.00
1942	385,240.00
1943	399,846.00
1944	415,442.00
1945	431,231.00
1946	447,894.00
1947	465,953.00
1948	483,601.00
1949	497,554.00
1950	523,619.00

The future revenues shown in the above table are calculated on the basis of the increase in use of electricity after the year 1933 and from the fact that the revenue per kilowatt-hour declines with increased use of electricity provided the rates remain the same.

The above revenues do not take into consideration the effect of any probable rate changes and are based on the same rates for the entire period shown. These rates are the new schedule of rates to be placed in effect January 1, 1934.

81 *Expense of Operation*

82 V. Revenue and Expenses (a & b)—continued

Yearly Expense of Operation—Steam Plant

(Based on 1933 output of 7,900,000 KWH at switchboard)

Production Expense			
Fuel		$51,360.00	
Plant maintenance	$10,000.00		
Insurance	2,000.00		
Water & miscellaneous expense	2,000.00		
Salaries and wages	15,000.00		
		29,000.00	
Total Production Expense			$80,360.00
Distribution Expense			
Maintenance		$7,000.00	
Salaries and wages		10,100.00	
Miscellaneous expense		800.00	
Meter expense:			
Salaries and wages		2,400.00	
Miscellaneous expense		500.00	
Office expense:			
Salaries and wages		7,430.00	
Miscellaneous expense		1,200.00	
Miscellaneous general expense		600.00	
Uncollectible bills		900.00	
New business expense		3,000.00	
Total Distribution Expense			$33,930.00
Total Expense of Operation			$114,290.00

83 *Summary of Operating Expense*

1933 Output - 7,900,000 KWH
1933 KWH Used - 6,465,260 KWH

	Steam	Per KWH Output (cents)	Per KWH Uses (cents)
Production Expense	$80,360.00	1.017	1.243
Distribution Expense	$33,930.00	0.4295	0.5248
Total Expense	$114,290.00	1.447	1.768

The expense of operation set forth above deals only with the production and distribution of electricity without considering the matter of excise tax, interest on indebtedness and any special expenses that may be incurred or donations made. These items will be considered later in this report.

84 *Future Yearly Operating Expense—Steam Plant*

Date	KWH Generated	Total Operating Expense	Expense of Operation per KWH
1933	7,900,000	$114,290.00	1.447 cents
1934	8,238,000	116,658.00	1.416 "
1935	8,686,872	117,658.00	1.355 "
1936	9,138,996	119,590.00	1.312 "
1937	9,599,304	121,486.00	1.265 "
1938	10,061,076	123,298.00	1.225 "
1939	10,497,480	124,866.00	1.189 "
1940	10,969,896	126,554.00	1.154 "
1941	11,446,848	128,178.00	1.120 "
1942	11,963,988	129,930.00	1.081 "
1943	12,456,252	131,438.00	1.055 "
1944	12,982,560	133,034.00	1.025 "
1945	13,518,216	134,578.00	0.9955 "
1946	14,084,712	136,170.00	0.9668 "
1947	14,698,824	137,894.00	0.9381 "
1948	15,303,816	139,450.00	0.9112 "
1949	15,975,360	141,210.00	0.8839 "
1950	16,675,776	142,974.00	0.8574 "

Two factors have been considered in determining the future operating expense. These are the fixed and variable expenses. The variable expense in the case of a steam generating plant is taken as the cost of coal; the variable expense with a Diesel generating plant, the cost of fuel oil and lubricating oil. All other expenses of operation are considered as fixed costs.

The expense of operation per kilowatt-hour shown above is taken as the expense per kilowatt-hour generated.

85 V. *Revenue and Expenses*

(c) *Disposition of Surplus*

Future Income Statement—1936—Steam Plant

The following income statement for the year, 1936, assumes that the City of Iowa City, Iowa, began its electric light and power department on January 1, 1936 so that a full years operation is reflected below. The basis of financing being 15 year 4% pledge warrants without grant of 30% from the Government.

Total Revenue—1936		$299,759.00
Expense—1936		
Total operating expense	$119,590.00	
Excise tax	9,000.00	
General expense	4,000.00	
Street lighting maintenance	4,000.00	
		136,590.00
Total Income		$163,169.00
Distribution extensions and renewals		15,000.00
		$148,169.00
4% interest on $917,000.00		36,680.00
		$111,489.00
Pledge warrant maturity		45,000.00
Net income for reserve and surplus		$66,489.00

86 FUTURE INCOME STATEMENT—STEAM PLANT

Basis—4% Pledge Warrants—15 year life
Rate Reductions of 10% in 1937
1941, 1945, 1949

Date	Total Revenue	Total Expense*	Total Expense per KWH used	5% Reserve Fund	Yearly Surplus
1936	$299,759.00	$233,270.00	3.063 cents	$14,988.00	$51,501.00
1937	282,220.00	234,831.00	2.936 "	14,111.00	33,278.00
1938	294,790.00	237,143.00	2.828 "	14,740.00	42,907.00
1939	306,537.00	239,101.00	2.733 "	15,327.00	52,109.00
1940	319,224.00	241,129.00	2.638 "	15,961.00	62,134.00
1941	299,793.00	242,553.00	2.543 "	14,990.00	42,250.00
1942	312,140.00	244,955.00	2.457 "	15,607.00	51,378.00
1943	323,738.00	246,988.00	2.379 "	16,187.00	60,563.00
1944	336,118.00	249,039.00	2.302 "	16,806.00	70,273.00
1945	314,974.00	250,428.00	2.223 "	15,749.00	48,797.00
1946	326,765.00	252,735.00	2.153 "	16,338.00	57,692.00
1947	339,543.00	255,079.00	2.082 "	16,977.00	67,487.00
1948	351,988.00	257,130.00	2.016 "	17,599.00	77,259.00
1949	330,690.00	255,250.00	1.917 "	16,535.00	58,905.00
1950	343,521.00	257,399.00	1.852 "	17,176.00	68,946.00
				$239,091.00	$845,679.00

Yearly surplus will be used to finance additional equipment and extensions to property as needed.

The expense per kilowatt-hour used, as shown above, is calculated on the basis of the kilowatt-hours sold by the company. This under municipal operation would compare with the kilowatt-hours sold plus all the energy used for street lighting.

In event the 30% grant is allowed the City of Iowa City will be able to lower its electric rates still further than shown in the above income statement.

V. *Revenue and Expenses*—cont.

87 (d) Unusual conditions.

No unusual conditions exist at the present time that may effect the present or future operating income and expenses. However, the establishment of an electric cook-

*Total Expense, as shown above, includes Retirement and Interest, Total Operating Expense and Excise Tax plus the following amounts:

General Expense	$4,000.00
Steel Lighting Maintenance	4,000.00
Distribution Extensions and Renewals	15,000.00
	$23,000.00

ing rate conducive to this use of electricity may be a favorable factor for future business. This use of electricity has not been encouraged for the reason that the electric company also furnishes gas to Iowa City.

V. *Revenue and Expenses*—continued

88 (e) Schedule of Rates

Rates of the Iowa City Light & Power Company Electric Rates in Effect December 1, 1933

Residential Lighting

	Gross	Net
30 KWH— @	9¢	8¢
30 KWH— @	8¢	7¢
40 KWH— @	7¢	6¢
Over 100 KWH— @	4¢	3¢
Minimum bill		$1.00

The net rate is charged if the account is paid on or before the discount day is shown on the face of the bill, otherwise the gross rate is charged.

Commercial Lighting

	Gross	Net
30 KWH— @	9¢	8¢
30 KWH— @	8¢	7¢
440 KWH— @	7¢	6¢
2000 KWH— @	5¢	4¢
Over 2500 KWH— @	4¢	3¢
Minimum bill		$1.00

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Optional Lighting Rate

Monthly demand charge per customer based on 15 minute demand $2.50 per KW.

Does not apply to customers with a demand less than 2 KW unless, using the minimum demand of $5.00 plus the energy rate; the total bill for the month figures less than the bill using the commercial block rate.

	Gross	Net
Energy charge for all electricity consumed—	3½¢	2½¢

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Note: The optional lighting rate is available to any customer within the city whose demand and energy consumption is such that the resultant rate secured is less than that from other lighting rates. Minimum demand under this rate is $5.00.

89 *Electric Cooking Rate*

	Gross	Net
First 50 KWH	5½¢	4½¢
Next 50 KWH	5¼¢	4¼¢
Over 100 KWH	5¢	4¢

The net rate is charged if the account is paid on or before the discount date as shown on the face of the bill, otherwise the gross rate is charged.

Note: Available to any customer desiring to cook with electricity.

Power Rate

Monthly, demand charge per customer, $1.00 per KW connected.

Energy Charge:

	Gross	Net
First 30 hrs use per KW of demand	6¢	5¢
Next 30 hrs use per KW of demand	4¢	3¢
For all current consumed in excess of first 60 hrs use of demand	3¢	2¢
Minimum demand charge for any customer	$1.00	

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Note: Available to all customers who have installed one or more motors larger than one horse power.

90 V. *Revenue and Expenses*
(e) Schedule of Rates—continued

Rates of the Iowa City Light & Power Company Proposed Electric Rates Effective January 1, 1934

Residential Lighting

	Gross	Net
30 KWH— @	7½¢	7¢
30 KWH— @	5½¢	5¢
Over 60 KWH— @	3½¢	3¢
Minimum bill	$1.00	

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Commercial Lighting

	Gross	Net
60 KWH— @	7½¢	7¢
90 KWH— @	6½¢	6¢
150 KWH— @	5½¢	5¢
1200 KWH— @	4½¢	4¢
2500 KWH— @	3½¢	3¢
Over 4000 KWH— @	3¢	2½¢
Minimum Bill	$1.00	

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Optional Residence Lighting

	Gross	Net
100 KWH— @	5¢	4½¢
Over 100 KWH— @	3¢	2½¢
Minimum Bill	$4.50	

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Optional Lighting Rate

Monthly demand charge per customer, based on 15 minute demand, $2.50 per KW.

Does not apply to customers with a demand less than 2 KW unless, using the minimum demand of $5.00 plus the energy rate, the total bill for the month figures less than the bill using the commercial block rate.

	Gross	Net
Energy charge for all electricity consumed..	2¼¢	2¼¢

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Note: The optional lighting rate is available to any customer within the city whose demand and energy consumption is such that the resultant rate secured is less than that from other lighting rates. Minimum demand under this rate is $5.00.

91

Electric Cooking Rate

	Gross	Net
50 KWH— @	5½¢	4½¢
Next 50 KWH— @	5¼¢	4¼¢
All over 100 KWH— @	5¢	4¢

The net rate is charged if the account is paid on or before the discount date as shown on the face of the bill, otherwise the gross rate is charged.

Note: Available to any customer desiring to cook with electricity.

Power Rate

Monthly demand charge per customer, $1.00 per KW connected load.

Energy Charge:

	Gross	Net
First 30 hours use per KW of demand....	4½¢	— 4¢
Next 30 hours use per KW of demand....	3½¢	— 3¢
For all current consumed in excess of first 60 hours use of demand	2½¢	— 2¢

The net rate is charged if the account is paid on or before the discount day as shown on the face of the bill, otherwise the gross rate is charged.

Note: Available to all customers who have installed one or more motors larger than one horse power.

92 VI. *Financial Data*

93 VI. *Financial Data:*

a. *Assessed Valuations:* Statement of assessed valuation of taxable property (real and personal) for last three fiscal years and ratio of assessed value to actual value.

	Real	Personal	Ratio assessed to actual
1930	12,018,988.00	4,156,346.00	50%
1931	12,388,484.00	2,581,648.00	50%
1932	12,662,268.00	2,515,041.00	50%

b. *Funded Debt:*

Issued to refund Improvement Bonds Outstanding.
General Obligation Bonds.
Amount Outstanding. $24,500.00
Interest Rate 4¼% payable semi-annually.

$7,500 maturing June 1, 1934.
8,000 " June 1, 1935.
9,000 " June 1, 1936.

Issued to pay the City's share of the cost of Street Improvements.
General Obligation Bonds.
Amount Outstanding $30,000.00
Interest rate 5% payable semi-annually.

$8,000 maturing May 1, 1937.
7,000 " May 1, 1938.
7,000 " May 1, 1939.
8,000 " May 1, 1940.

Issued to liquidate a judgment rendered on refused warrants.
General Obligation Bonds.
Amount Outstanding. $9,500.00
Interest Rate 4¼% payable semi-annually.

$3,000 maturing July 1, 1934.
3,000 " July 1, 1935.
3,500 " July 1, 1936.

Issued to fund a judgment rendered on refused warrants.
General Obligation Bonds.

Amount Outstanding $35,400.00
Interest Rate 5½% payable semi-annually.

94 $4,400 maturing May 1, 1937.
11,000 " May 1, 1938.
10,000 " May 1, 1939.
10,000 " May 1, 1940.

Issued to fund a judgment rendered on refused warrants.
General Obligation Bonds.
Amount Outstanding: $24,759.21
Interest Rate 5% payable semi-annually.

$6,000 maturing May 1, 1936.
6,000 " May 1, 1937.
12,759.21 " May 1, 1941.

Issued to fund a judgment rendered on refused warrants.
General Obligation Bonds.
Amount Outstanding $18,690.76
Interest rate 5% payable semi-annually.

$18,690.76 maturing Nov. 1, 1934.

Issued to construct a viaduct over railway tracks on College Street.
General Obligation Bonds.
Amount Outstanding $15,000.00
Interest rate 4¾% payable semi-annually.

$15,000.00 maturing Nov. 1, 1942

Issued for purchase of fire equipment.
General Obligation Bonds.
Amount Outstanding $3,500.00
Interest rate 6% payable semi-annually.

$2,000 maturing Nov. 1, 1933.
1,500 " Nov. 1, 1934.

Issued for purchase of fire equipment.
General Obligation Bonds.
Amount Outstanding $1,000.00
Interest rate 5½% payable semi-annually.

$1,000.00 maturing Oct. 1, 1932.

Issued to refund outstanding warrants.
General Obligation Bonds.
Amount Outstanding $1,000.00
95 Interest rate 5% payable semi-annually

$1,000.00 maturing May 1, 1934.

Issued for the purpose of constructing the Iowa Avenue Bridge across the Iowa River.
Amount Outstanding $22,000.00
General Obligation Bonds
Interest rate 4½% payable semi-annually.

$5,000 maturing Nov. 1, 1933.
5,000 " Nov. 1, 1934.
12,000 " Nov. 1, 1935.

Issued to take up refused warrants on the Bridge Fund.
General Obligation Bonds.
Amount Outstanding: $25,000.00
Interest rate 5% payable semi-annually.

$3,000 maturing Nov. 1, 1933.
3,000 " Nov. 1, 1934.
9,000 " Nov. 1, 1936.
10,000 " Nov. 1, 1937.

Issued for the purchase of land and equipping Municipal Airports.
General Obligation Bonds.
Amount outstanding: $65,000.00
Interest rate 4¼ payable semi-annually.

1933	1934	1935	1936	1937	1938	1939	1940
2000	3000	3000	3000	3000	4000	3000	4000

1941	1942	1943	1944	1945	1946	1947	1948
4000	4000	5000	4000	6000	5000	6000	5000

1949
2000

Issued for the purpose of paying contractor for construction of sewers.

Special assessment bonds.
Amount outstanding: $52,775 78
Interest rate 5% payable annually.

96	$10,325.67	maturing	May 1, 1932.
	9,099.97	"	May 1, 1933.
	10,499.97	"	May 1, 1934.
	6,399.97	"	May 1, 1935.
	5,650.00	"	May 1, 1936.
	3,750.00	"	May 1, 1937.
	2,650.00	"	May 1, 1938.
	2,650.00	"	May 1, 1939.
	1,150.00	"	May 1, 1940.
	550.00	"	May 1, 1941.
	50.00	"	May 1, 1942.

Issued for the purpose of paying contractor for the construction of paving.
Special Assessment Bonds.
Amount Outstanding: $394,126.12
Interest rate 5% payable annually.

$40,626.12	maturing	May 1, 1932.
72,700.00	"	May 1, 1933.
78,700.00	"	May 1, 1934.
60,000.00	"	May 1, 1935.
47,200.00	"	May 1, 1936.
37,700.00	"	May 1, 1937.
32,000.00	"	May 1, 1938.
17,000.00	"	May 1, 1939.
11,000.00	"	May 1, 1940.
7,000.00	"	May 1, 1941.

Issued to pay the Contractor for constructing sidewalks.
Special Assessment Bonds.
Amount Outstanding: $7,006.00
Interest rate 5% payable semi-annually.

$600.00	maturing	May 1, 1932.
1,351.00	"	May 1, 1933.
1,451.00	"	May 1, 1934.
1,451.00	"	May 1, 1935.
851.00	"	May 1, 1936.
851.00	"	May 1, 1937.
351.00	"	May 1, 1938.
100.00	"	May 1, 1939.

Issued to fund a judgment rendered on refused warrants.
General Obligation Bonds.
Amount Outstanding: $75,000.00
Interest rate 5% payable semi-annually.

97	$5,000.00	maturing	Nov. 1, 1941.
	5,000.00	"	Nov. 1, 1942.
	5,000.00	"	Nov. 1, 1943.
	20,000.00	"	Nov. 1, 1944.
	20,000.00	"	Nov. 1, 1945.
	20,000.00	"	Nov. 1, 1946.

c. *Sinking Fund:* None
d. *Floating Debt:* None
e. *Overlapping Debt:* Statement of gross debt of all over lapping taxing or assessment districts (in school—county—city).

School Board in Iowa City	$104,000.00
County Board in Johnson County	$1,289,044.00

City list attached.

f. *Outstanding Financial Obligations:* City—County—School Board. See "E".
g. *Defaults:* Some Special Assessment Bonds not paid in 1932 and 1933 due to balance in closed banks and slow payment of special assessments.
h. *Tax Rate:* Present tax rate per $1,000.00 of assessed value for State, County, City & School.

	State	County	City	School	Total
Iowa City	$2.25	$5.72	$14.01	$17.12	$39.10

i. *Tax Collections:* Levy for municipal purposes only.

	1929 Levied 1930 Collected	1930 Levied 1931 Collected	1931 Levied 1932 Collected
Amount Levied	$207,537.86	$204,973.26	$203,020.05
Uncollected at date of delinquency	2,349.08	3,616.34	18,162.61
Uncollected as of September 15, 1933	1,149.08	2,306.66	10,162.61

j. *Tax Dates:* Statement of dates on which taxes are levied, become payable and become delinquent.

Taxes levied—2nd Monday in September
" payable—January 1st.
" delinquent—March 1st and September 1st.

k. *Penalties on Delinquent Taxes:* Penalty of ¾ of 1% per month.

l. *Receipts and Expenditures of the City:*

98	Estimated Current Revenues	$263,724.00
	Estimated Current Expenses	247,767.00

m. *Description of City:* Iowa City is the County Seat of Johnson County and is situated on the Iowa River about 60 miles west of Davenport and 125 miles east of the State Capitol at Des Moines. The first State Capitol was located at Iowa City, and later the first State Capitol building was made the central building of the State University. This educational institution has grown until the present student enrollment is approximately 9,000.

Iowa City is situated at the intersection of Federal Highways No. 6 and 161 both of which are paved across the state. The State roads entering Iowa City are as follows: No. 1 and 261—well surfaced all weather roads. The county road system of Johnson County is all well surfaced all weather roads.

The railroad facilities are very good. The main line of the Chicago, Rock Island & Pacific Railway—Chicago to Denver—and a branch of the Chicago, Rock Island & Pacific, Iowa City to Muscatine. Also, the electric line of the Cedar Rapids & Iowa City Railway Company.

Iowa City is located on the main route of the United Airways from New York to San Francisco. The municipal aviation field at Iowa City is the first air mail field to be located in Iowa.

Receipts for the year ending 3-31-30	$430,854.45	
Warrants outstanding 3-31-30	199.03	
Balance of cash on hand 4-1-29	76,440.67	
Expenditures for the year ending 3-31-30		$391,409.73
Warrants outstanding 4-1-29		349.15
Balance of cash on hand 3-31-30		115,736.27
	$507,494.15	$507,494.15

99 Receipts for the year ending 3-31-31	$344,062.31	
Warrants Outstanding 3-31-31	8,196.99	
Balance of cash on hand 4-1-30	115,736.27	
Expenditures for the year ending 3-31-31		$355,158.16
Warrants Outstanding 4-1-30		199.03
Balance of cash on hand 3-31-31		112,638.38
	$467,996.57	$467,996.57
Receipt for the year ending 3-31-32	$368,213.15	
Warrants Outstanding 3-31-32	46,996.20	
Balance of cash on hand 4/1/31	112,638.38	
Expenditures for the year ending 3-31-32		$313,661.34
Warrants Outstanding 4/1/31		8,196.99
Balance of cash on hand 3-31-32		205,989.40
	$527,847.73	$527,847.73

100 VII. *Legal Data*

101 VII. *Legal Data*

Opinion of Counsel

To the Administrator,
Federal Emergency Administration of Public Works,
P. F. Hopkins, Engineer for Board,
Des Moines, Iowa

Dear Sir:

I hereby certify that I have examined the application of the City of Iowa City, Johnson County, Iowa, for a loan of $917,000.00 to defray the cost of constructing a municipal light and power system, and am of the opinion that the same is in proper and satisfactory form, and in substantial compliance with the rules and regulations prescribed by the Administrator in Circular No. 2.

I do further certify that I have examined the Constitutional, Statutory and Charter provisions applicable to the power of the applicant to construct the project and issue obligations in payment therefore, and am of the opinion that the applicant possesses lawful power and authority to construct the project and to issue obligations therefor.

I do further certify, in keeping with Circular No. 2, that:

a. *Organization*
Applicant was incorporated April 6th, 1853, under the laws of Iowa, provisions of Chapter 42, Code of Iowa, 1851.

b. *Charter*
No special charter.

c. *Debt Limitation*
5% of taxable property on last tax list.
Article XI—Section 3—Constitution of Iowa.
1½%—Section 6238—Code of Iowa, 1931.

VII. *Legal Data*

102 Valuation—January 1st, 1933.

Real Estate	$12,635,100.00
Money & Credits	2,515,041.00

d. *Deduction From C. Above*
Gross indebtedness $275,349.97
No deductions.

e. *Powers of Applicant*
1. Chapter 312—Sections 6127—Code of Iowa—1931.
2. Section 6134—d1—Code of Iowa—1931.

f. *Authorization by Voters*
Yes. Sections 6131 and 6134—d3. Code of Iowa—1931.

g. *Authorization by Resolution or Ordinance not Sufficient.*
Authorization by voters is required. Therefore resolution or ordinance not sufficient. Sections 6131 and 6134—d3. Code of Iowa—1931.

h. *Publication of Resolution*
Not applicable.

i. *Franchise Requirements*
No.

j. *Sale of Obligations*
Private sale.
Sections 6134d1 and 6134d2—Code of Iowa, 1931.

k. *Maximum Interest*
Maximum rate of Interest—5%. Chapter 319—Code of Iowa, 1931.

l. *Minimum Price*
Par plus accrued interest. Section 1175—Code of Iowa, 1931

m. *Other Authority Required*
Yes. To State Securities Dept. Chapter 393cl. Code of Iowa, 1931

n. *Maturity of Obligations*
No provision as to first maturity.
20 years maximum period. Section 1179-b 1—Code of Iowa, 1931.
No limitation specified in Chapter 312. Code of Iowa, 1931.

VII. *Legal Data*

103 o. *Restrictions on Payment*
No.

p. *Negotiability*
Yes. Section 9461—Code of Iowa—1931.

q. *Character of Investment*
No.

r. *Registration*
Said obligations may be made registerable as to principal only.
Section 6256—Code of Iowa, 1931.

s. *Approval of Bonds*
Yes. By State Securities Dept. Chapter 393-c 1. Code of Iowa—1931.

t. *Prior Registration*
Proposed obligations required to be registered in the office of City Treasurer. See Section 6256—Code of Iowa—1931.

u. *Tax Exemption—State*
Yes. See Section 6944—Paragraph 5—Code of Iowa—1931.

v. *Tax Exemption—Federal*
Yes.

w. *Litigation*
No.

x. *Property Acquisition*
Yes. Sections 6135 and 6140. Code of Iowa—1931.

y. *Bond Counsel*
Chapman & Cutler, Chicago, Illinois.

z. *Authority for Securities*
1. No. See Const. Art. 11, Para. 3; and Sections 6127, 6131, 6238 to 6241, and 6134-d 1 to 6134-d6—Code of Iowa—1931.
Wyatt v. Town of Manning 250 N. W. 141 (Iowa 1933)

104 VII. *Legal Data*

z. *Authority for Securities*—continued
2. No.
3. From the net earnings of the plant.
Section 6134-d 1—Code of Iowa—1931.
4. Foreclosure of mortgage on plant.
5. No.

aa. *Authority for Special Assessment Bonds*
1. Not applicable.
2. Not applicable.
3. Not applicable.
4. Not applicable.
5. Not applicable.

bb. *Leasing Authority*
Sections 6134-d 1 and 6134-d 2.
Code of Iowa—1931.

Yours very truly,

THOS. E. MARTIN,
City Solicitor
Iowa City, Iowa.

P. W. 17681

105 LOAN AND GRANT AGREEMENT dated as of ....., 193..., between the CITY OF IOWA, JOHNSON COUNTY, STATE OF IOWA (herein called the "Borrower") and the UNITED STATES OF AMERICA (herein called the "Government").

Part One

1. *Purpose of Agreement.* Subject to the terms and conditions of this Loan and Grant Agreement (herein called the "Agreement") the Government will, by loan and grant not exceeding in the aggregate the sum of $917,000 (herein called the "Allotment") aid the Borrower in financing a project (herein called the "Project") consisting of the construction of an electric power plant with steam turbo-generator, boilers and necessary auxiliaries and control equipment, and a complete distribution system all pursuant to the Borrower's application (herein called the "Application"), P. W. A. Docket No. 7738, Title II of the National Industrial Recovery Act (herein called the "Act") and the Constitution and Statutes of the State of Iowa (herein called the "State").

2. *Amount and Method of Making Loan.* The Borrower will sell and the Government will buy, at the principal amount thereof plus accrued interest, $709,000 aggregate principal amount of the bonds described below (herein called the "Bonds") less such amount of the Bonds, if any, as the Borrower may sell to purchasers other than the Government.

(a) *Designation:* Electric Plant Revenue Bond.

(b) *Authorized Amount:* $709,000.

Docket No. 7738 Exhibit "B" P. W. 11088

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(c) *Type:* Negotiable, coupon, serial, revenue bond.

(d) *Registration:* Registerable at option of the holder as to principal only or as to principal and interest.

(e) *Date:* August 1, 1934

(f) *Interest:* at the rate of 4 per cent per annum payable on February 1, 1935 and semiannually thereafter on February 1 and August 1 of each year.

(g) *Maturities:* Payable on August 1 in years and amounts as follows:

Year	Amount	Year	Amount
1936	$47,000	1944	$47,000
1937	47,000	1945	47,000
1938	47,000	1946	47,000
1939	47,000	1947	48,000
1940	47,000	1948	48,000
1941	47,000	1949	48,000
1942	47,000	1950	48,000
1943	47,000		

(h) *Security:* Special obligations of the Borrower payable as to both principal and interest from and secured by an exclusive first lien on the net revenues of the entire electric system (such net revenues being herein defined as the gross revenues after deduction of reasonable operations and maintenance expenses) and further secured by a first lien mortgage upon the real and personal property constituting the electric system; and additionally secured by a franchise to operate said electric system for a period of (20) twenty years after date of sale of the electric system upon foreclosure of the mortgage.

(i) *Place and Medium of Payment:* Payable, in any coin or currency which, on the respective dates of payment of the principal of and interest on the Bonds, is legal tender for the payment of public and private debts, at the office of the Treasurer of City of Iowa City, Johnson County, State of Iowa or, at the option of the holder, at a bank or trust company in the Borough of Manhattan, City and State of New York.

(j) *Denomination:* $1,000.

Docket No. 7738 1-2

107 3. *Amount and Method of Making Grant.* The Government will make and the Borrower will accept, whether or not any or all of the Bonds are sold to purchasers other than the Government, a grant (herein called the "Grant") in an amount equal to 30 per centum of the cost of the labor and materials employed upon the Project. The determination by the Federal Emergency Administrator of Public Works (herein called the "Administrator") of the cost of the labor and materials employed upon the Project shall be conclusive. The Government will make part of the Grant by payment of money and the remainder of the Grant

by cancellation of Bonds or interest coupons or both. If all of the Bonds are sold to purchasers other than the Government, the Government will make the entire Grant by payment of money. In no event shall the Grant, whether made partly by payment of money and partly by cancellation, or wholly by payment of money, be in excess of $250,000.

4. *Bond Proceedings.* When the Agreement has been executed the Borrower (unless it has already done so) shall promptly take all proceedings necessary for the authorization and issuance of the Bonds.

5. *Bond and Grant Requisition.* From time to time after the execution of this Agreement, the Borrower shall file a requisition with the Government requesting the Government to take up and pay for Bonds or to make a payment on account of the Grant. Each requisition shall be accompanied by such documents as may be requested by the Administrator (a requistion together with such documents being herein collectively called a "Requisition").

6. *Bond Purchases.* If a Requisition requesting the Government to take up and pay for Bonds is satisfactory in form and substance to the Administrator, the Government, within a reasonable time after the receipt of such Requisition, will take up and pay for Bonds, having maturities satisfactory to the Administrator, in such amount as will provide, in the judgment of the Administrator, sufficient funds for the construction of the Project for a reasonable period. Payment for such Bonds shall be made at a Federal Reserve Bank to be designated by the Administrator or at such other place or places as the Administrator may designate, against delivery by the Borrower of such Bonds, having all unmatured interest coupons attached thereto, together with such documents as may be requested by the Administrator. The Government shall be under no obligation to take up and pay for Bonds beyond the amount which in the judgment of the Administrator is needed by the Borrower to complete the Project.

7. *Grant by Payment of Money.* If a Requisition requesting the Government to make a payment on account of
108 the Grant is satisfactory in form and substance to the Administrator, the Government will pay to the borrower at such place or places as the Administrator may designate against delivery by the Borrower of its receipt there-

for, a sum of money equal to the difference between the aggregate amount previously paid on account of the Grant, and

(a) 25 per centum of the cost of the labor and materials shown in the Requisition to have been employed upon the Project if the Requisition shows that the Project has not been completed, or

(b) 30 per centum of the cost of such labor and materials if the Requisition shows that the Project has been completed and that all costs incurred in connection therewith have been determined;

provided, however, that the part of the Grant made by payment of money to the Borrower shall not be in excess of the difference between the Allotment and the amount paid (not including the amount paid as accrued interest) for the Bonds taken up by the Government. The Government reserves the right to make any part of the Grant by cancellation of Bonds or interest coupons or both rather than by payment of money if, in the judgment of the Administrator, the Borrower does not need the money to pay costs incurred in connection with the construction of the Project.

8. *Grant by Cancellation of Bonds.* If the Borrower, within a reasonable time after the completion of the Project, shall have filed a Requisition, satisfactory in form and substance to the Administrator, then the Government will cancel such Bonds and interest coupons as may be selected by the Administrator in an aggregate amount equal (as nearly as may be) to the difference between 30 per centum of the cost of the labor and materials employed upon the Project and the part of the Grant made by payment of money. The Government will hold Bonds or interest coupons for such reasonable time in an amount sufficient to permit compliance with provisions of this Paragraph, unless payment of such difference shall have been otherwise provided for by the Government.

9. *Grant Advances.* At any time after the execution of this Agreement the Government may, upon request of the Borrower, if in the judgment of the Administrator the circumstances so warrant, make advances to the Borrower on account of the Grant, but such advances shall not be in excess of 30 per centum of the cost of the labor and materials to be employed upon the Project, as estimated by the Administrator.

109 10. *Deposit of Bond Proceeds and Grant; Bond Fund; Construction Accounts.* The Borrower shall deposit all accrued interest which it receives from the sale of the Bonds at the time of the payment therefor and any payment on account of the Grant which may be made under the provisions of Paragraph 8, Part One, hereof, into an interest and bond retirement fund account (herein called the "Bond Fund") promptly upon the receipt of such accrued interest or such payment on account of the Grant. It will deposit the remaining proceeds from the sale of the Bonds (whether such Bonds are sold to the Government or other purchasers) and the part of the Grant made by payment of money under the provisions of Paragraph 7, Part One, hereof, promptly upon the receipt of such proceeds or payments in a separate account or accounts (each of such separate accounts herein called a "Construction Account"), in a bank or banks which are members of the Federal Reserve System and of the Federal Deposit Insurance Corporation and which shall be satisfactory at all times to the Administrator.

11. *Disbursement of Monies in Construction Accounts and in Bond Fund.* The Borrower shall expend the monies in a Construction Account only for such purposes as shall have been previously specified in Requisitions filed with the Government and approved by the Administrator. Any monies remaining unexpended in any Construction Account after the completion of the Project which are not required to meet obligations incurred in connection with the construction of the Project shall either be paid into the Bond Fund, or said monies shall be used for the purchase of such of the Bonds as are then outstanding at a price not exceeding the principal amount thereof plus accrued interest. Any Bonds so purchased shall be cancelled and no additional Bonds shall be issued in lieu thereof. The monies in the Bond Fund shall be used solely for the purpose of paying interest on the principal of the Bonds.

12. *Other Financial Aid from the Government.* If the Borrower shall receive any funds (other than those received under this Agreement) directly or indirectly from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the Grant shall be reduced, and to the extent that such funds so received exceed

the part of the Grant which would otherwise be made by payment of money, the aggregate principal amount of Bonds to be purchased by the Government shall be reduced.

110 13. *Conditions Precedent to the Government's Obligations.* The Government shall be under no obligation to pay for any of the Bonds or to make any Grant:

(a) *Financial Condition and Budget.* If, in the judgment of the Administrator, the financial condition of the Borrower shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government, or the Borrower shall have failed to balance its budget satisfactorily or shall have failed to take action reasonably designed to bring the ordinary current expenditures of the Borrower within the prudently estimated revenues thereof;

(b) *Cost of Project.* If the Administrator shall not be satisfied that the Borrower will be able to complete the Project for the sum of $917,000, or that the Borrower will be able to obtain, in a manner satisfactory to the Administrator, any additional funds which the Administrator shall estimate to be necessary to complete the Project;

(c) *Compliance.* If the Administrator shall not be satisfied that the Borrower has complied with all the provisions contained in this Agreement or in the proceedings authorizing the issuance of the Bonds, theretofore to be complied with by the Borrower;

(d) *Legal Matters.* If the Administrator shall not be satisfied as to all legal matters and proceedings affecting the Bonds the security therefor or the construction of the Project;

(e) *Representations.* If any representation made by the Borrower in this Agreement or in the Application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Borrower shall be found by the Administrator to be incorrect or incomplete in any material respect.

111 (f) *Bond Resolution.* If the Borrower shall not have adopted a resolution providing for the authorization, issuance and sale of the Bonds, which shall contain such provisions as are, in the judgment of the Administrator, necessary to insure that:

1. The Borrower will use excess revenues derived from the operation of the plant for the purpose of paying outstanding Bonds.

2. The Borrower will secure the Bonds by a pledge of the property purchased, constructed and/or erected with their proceeds.

3. Any revenue Bonds issued subsequent to Bonds issued hereunder, will be junior and subordinate to the Bonds issued hereunder.

(g) *Rate Ordinances.* If the Borrower shall not have passed an ordinance providing for the fixing and maintaining of rates and collection of charges for the services afforded by Borrower's entire electric system, Additions thereto and/or extensions thereof which shall, in the judgment of the Administrator, contain such provisions as are necessary.

1. To insure that the revenues to be derived from the entire electric system additions thereto and/or extensions thereof will be sufficient at all times to pay the cost of operation and maintenance of the plant and to provide for the payment of the principal of and the interest on the Bonds and maintain a reasonable reserve therefor.

2. To insure the payment of the reasonable cost of any service rendered by the entire electric system to the Borrower or to any of the Borrower's agencies or instrumentalities.

(h) *Court Decision.* If the Supreme Court of Iowa shall not have rendered a decision, which satisfied the Administrator, that the Borrower may legally authorize and sell the Bonds and make all the covenants and agreements contained in the Bonds, the proceedings authorizing their issuance and sale and in this agreement.

(i) *Competition.* If the Borrower shall not satisfy the Administrator that the Iowa City Light and Power Company will be without authority to sell electrical energy within the municipal limits or, if such evidence can not be produced, that the electric system of the Borrower will have a sufficient portion of the gross business so that the Project's estimated revenues will be adequate to pay the principal of and interest on the Bonds when the same are due and payable.

(j) *Land to be Acquired.* If the Borrower fails to acquire the land needed at a price and in a manner satisfactory to the Administrator.

In consideration of the Grant, the Borrower covenants that:

1. *Construction Work.* All work on the Project shall be done subject to the rules and regulations adopted by the Administrator to carry out the purposes and control the administration of the Act. The following rules and regulations as set out in Bulletin No. 2, Non-Federal Projects revised March 3, 1934, entitled "P.W.A. Requirements as to Bids, Contractors' Bonds, and Contract, Wage and Labor Provisions and General Instructions as to Applications and Loans and Grants", shall be incorporated verbatim in all construction contracts for work on the project (in such construction contracts all blank spaces shall be filled in as provided in said Bulletin):

"1. (a) *Convict labor.*—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project.

"(b) *Thirty-hour week.*—Except in executive, administrative, and supervisory positions, so far as practicable and feasible in the judgment of the Government engineer, no individual directly employed on the project shall be permitted to work more than 8 hours in any 1 day nor more than 30 hours in any 1 week; Provided, That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the succeeding 20 days.

"(c) No work shall be permitted on Sundays or legal holidays except in cases of emergency.

"2. *Wages.*—(a) All employees directly employed on this work shall be paid just and reasonable wages which shall be compensation sufficient to provide for the hours of labor as limited, a standard of living in decency and comfort. Such wages shall in no event be less than the minimum hourly wage rates for skilled and unskilled labor prescribed by the Administrator for the zone or zones in which the work is to be done, viz:

Skilled labor .....
Unskilled labor .....

"(b) In the event that the prevailing hourly rates prescribed under collective agreements or understandings be-

tween organized labor and employers in effect on April 30, 1933, shall be above the minimum rates specified above, such

P. W. 11088 (R 2) (Aug. 10, 1934)

113 agreed wage rates shall apply: Provided, That such agreed wage rates shall be effective for the period of this contract, but not to exceed 12 months from the date of the contract.

"(c) The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and serving laborers who work and serve skilled journeymen mechanics and who are not to be termed as "unskilled laborers."

"(d) The provisions of this contract relating to hours and minimum wage rates for labor directly employed on the project shall for the purposes of this contract, to the extent applicable, supersede the terms of any code adopted under Title I of the act permitting longer hours or lower minimum wage rates.

"(e) All employees shall be paid in full not less often than once each week and in lawful money of the United States, unless otherwise permitted by the Government engineer, in the full amount accrued to each individual at the time of closing of the pay roll, which shall be at the latest date practicable prior to the date of payment and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: Provided, however, That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical aid insurance, in such amounts as are authorized by the laws of.....to be paid by employees in those cases in which, after the making of the deductions, the wage rates will not be lower than the minimum wage rates herein established.

"(f) A clearly legible statement of all wage rates to be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the laws of....., should such deductions be made, shall be posted in a prominent and easily accessible place at the side of the work, and there shall be kept a true and accurate record of the hours worked

by and the wages, exclusive of all authorized deductions paid to each employee, and the engineer inspector shall be furnished with a sworn statement thereof on demand.

114 (g) The Board of Labor Review (herein called the "Board") shall hear all labor issues arising under the operation of this contract and such issues as may result from fundamental changes in exonomic conditions during the life of this contract.

"(h) The minimum wage rates herein established shall be subject to change by the Administrator on recommendation of the Board. In the Event that as a result of fundamental changes in economic conditions, the Administrator, acting on such recommendation, from time to time establishes different minimum wage rates (referred to in Paragraph 2 (a), (b), and (c) hereof) all contracts for work on the project shall be adjusted accordingly by the parties thereto so that the contract price to the contractor under any contract or to any subcontractor under any subcontract shall be increased by an amount equal to such decreased cost.

"(i) Engineers, architects, and other professional and subprofessional employees engaged in duties normally done at the site of the project shall receive at least the prevailing rates for the various types of service to be rendered, provided that in no case shall professional employees receive less than the following weekly compensation for 40 hours or less irrespective of the number of hours employed: $36.00 in the northern zone; $33.00 in the central zone; and $30.00 in the southern zone. Where the working week is longer than 40 hours, weekly compensation shall be increased proportionally. Compensation under this paragraph shall be subject to the approval of the Government Engineer.

"3. (a) *Labor preferences.*—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (1) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivision and/or county).....and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or district).....

Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates.

"(b) *Employment services.*—To the fullest extent possible, labor required for the project and appropriate to be secured through employment services shall be chosen from the lists of qualified workers submitted by local employment agencies designated by the United States Employ-
115 ment Service: Provided, however, That union labor, skilled and unskilled, shall not be required to register at such local employment agencies but, if such labor is desired by the employer, shall be secured in the customary ways through recognized union locals. In the event, however, that employers who wish to employ union labor are not furnished with qualified union worker by the union locals which are authorized to furnish such labor residing in the locality within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all labor shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service. In the selection of workers from lists prepared by such employment agencies and union locals, the labor preferences provided in section (a) of this paragraph 3 shall be observed, and preference shall be given to those unemployed at the date of registration who, at the date of selection, have no other available employment.

"(c) *Compliance with Title I of the Act.*—The following sections 7 (a) (1) and 7 (a) (2) of Title I of the Act shall be observed:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

"(4) *Human labor.*—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to

the extent that the work may be accomplished at no greater expense by human labor than by the use of machinery, and labor of requisite qualifications is available, such human labor shall be employed.

"5. *Compensation insurance.*—Every employer of labor shall provide, if permitted by the laws of....., adequate workmen's compensation insurance for all labor employed by him on the project who may come within the protection of such laws and shall provide, where practicable, employers' general liability insurance for the benefit of his employees not protected by such compensation laws, and proof of such insurance satisfactory to the Govern-
116 ment engineer shall be given. Where it is not permitted by law that such insurance be provided, some method satisfactory to the Administrator must be provided by which the employees may, by paying the entire amount of the premiums, derive a similar protection.

"6. *Persons entitled to benefits of labor provisions.*—There shall be extended to every person who performs the work of a laborer or of a mechanic on the project or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

"7. *Withholding payment.*—Under all construction contracts, ... may withhold from the contractor
(The borrower)
so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics.

"8. *Accident prevention.*—Reasonable precautions shall at all times be exercised for the safety of employees on the work and applicable provisions of the Federal, State, and municipal safety laws and building and construction codes shall be observed. All machinery and equipment and other physical hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, unless and to the extent that such provisions are

incompatible with Federal, State, or municipal laws or regulations.

"9. *N. R. A. Compliance.*—The contractor shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act (President's Reemployment Agreement), and..... ..... shall have the right, subject to the ap-
(The borrower)
proval of the Government engineer, to cancel this contract for failure to comply with this provision and make open market purchases or have the work called for by this contract otherwise performed at the expense of the
117 contractor. So far as articles, materials or supplies produced in the United States are concerned, no articles, materials or supplies shall be accepted or purchased for the performance of the work nor shall any subcontracts be entered into for any articles, materials or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid.

"10. (a) *Inspection of records,*—The Administrator, through his authorized agents, shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. There shall be submitted to the Administrator, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Administrator through his authorized agents, may require. The submission and approval of said schedules, if required, shall be a condition precedent to the making of any payment under the contract.

"(b) There shall be provided for the use of the engineer inspector such reasonable facilities as he may request. In case of dispute the Government engineer shall determine the reasonableness of the request.

"11. *Reports.*—Every employer of labor on the project shall report within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours work, wage scales paid to the various classes of labor, and the total expenditures for materials. Two copies of each of such monthly reports are to be furnished to the Government engineer, and one copy of each to the United States Department of Labor. The contractor under any construction contract shall also furnish to ..... to the Govern-
(The borrower)
ment engineer and to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

"12. There shall be provided all necessary ser-
118 vices and all materials, tools, implements, and appliances required to perform and complete entirely and in a workmanlike manner the work provided for in this contract. Except as otherwise approved in writing by the Government engineer, such services shall be paid for in full at least once a month and such materials, tools, implements, and appliances shall be paid for at least once a month to the extent of 90 percent of the cost thereof to the contractor, and the remaining 10 percent shall be paid 30 days after the completion of the part of the work in or on which such materials, tools, implements, or appliances are incorporated or used.

"13. *Signs.*—Signs bearing the legend Public Works Project No. .... shall be erected in appropriate places at the site of the project.

"14. All reasonable rules and regulations which the Public Works Administration may prescribe toward the effectuation of the matters covered by paragraphs 1 to 13, inclusive, shall be observed in the performance of the work.

"15. Subcontractors.—(a) Appropriate provisions shall be inserted in all subcontracts relating to this work to in-

sure the fulfillment of all provisions of this contract affecting such subcontractors, particularly paragraphs 1 to 14, inclusive.

"(b) No bid shall be received from any subcontractor who has not signed U. S. Government Form No. P. W. A. 61, revised (March 1934).

"16. *Termination for breach.*—In the event that any of the provisions of paragraphs 1 to 15, inclusive, of this contract are violated by the contractor under the construction contract or by any subcontractor under any subcontract on the work, ... may, subject to the approval
(The borrower)
of the Government engineer, and upon request of the Administrator, shall terminate the contract by serving written notice upon the contractor of its intention to terminate such contract, and, unless within 10 days after the serving of such notice such violation shall cease, the contract shall, upon the expiration of said 10 days cease and terminate. In the event of any such termination ..... may
(The borrower)
take over the work and prosecute the same to completion or otherwise for the account and at the expense of the contractor and/or such subcontractor, and the contractor and his sureties shall be liable to ..... for any
(The borrower)
119 excess cost occasioned ..... in the event
(The borrower)
of any such termination, and ..... may take
(The borrower)
possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work, and necessary therefor. This clause shall not be construed to prevent the termination for other causes provided in the construction contract.

"17. *Definitions.*—The term "Act" as used herein refers to the National Industrial Recovery Act. The term "Government engineer" as used herein shall mean the State Engineer (P. W. A.) or his duly authorized representative or any person designated to perform his duties or functions under this agreement by the Administrator. The term "engineer inspector" as used herein refers to State engineer inspectors, resident and assistant resident

engineer inspectors, and supervising engineers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performance of the work."

2. *Restriction as to Contractors.* The Borrower shall receive no bid from any contractor, nor permit any contractor to receive any bid from any subcontractor, who has not signed U. S. Government Form No. P. W. A. 61, revised March, 1934.

3. *Bonds and Insurance.* Construction contracts shall be supported by adequate surety or other bonds or security satisfactory to the Administrator for the protection of the Borrower, or materialmen, and of labor employed on the Project or any part thereof. The contractor under any construction contract shall be required to provide public liability insurance in an amount satisfactory to the Administrator.

4. *Force Account.* All construction work on the Project shall be done under contract, provided, however, that if prices in the bids are excessive, the Borrower reserves the right, anything in this Agreement to the contrary notwithstanding, to apply to the Administrator for permission to do all or any part of the Project on a force account basis.

120 *Part Three*

1. *Construction of Project.* Not later than upon the receipt by it of the first Bond payment, the Borrower will commence or cause to be commenced the construction of the Project, and the Borrower will thereafter continue such construction or cause it to be continued to completion with all practicable dispatch, in an efficient and economical manner, at a reasonable cost and in accordance with the provisions of this Agreement, plans, drawings, specifications and construction contracts which shall be satisfactory to the Administrator, and under such engineering supervision and inspection as the Administrator may require. Except with the written consent of the Administrator, no materials or equipment for the Project shall be purchased by the Borrower subject to any chattel mortgage, or any conditional sale or title retention agreement.

2. *Information.* During the construction of the Project the Borrower will furnish to the Government all such information and data as the Administrator may request as to the construction, cost and progress of the work. The Borrower will furnish to the Government and to any purchaser from the Government of 25 per centum of the Bonds, such financial statements and other information and data relating to the Borrower and the Project as the Administrator or any such purchaser may at any time reasonably require.

3. *Representations and Warranties.* The Borrower represents and warrants as follows:

(a) *Litigation.* No litigation or other proceedings are now pending or threatened which might adversely affect the Bonds, the security therefor the construction and operation of the Project, or the financial condition of the Borrower;

(b) Financial Condition. The character of the assets and the financial condition of the Borrower are as favorable as at the date of the Borrower's most recent financial statement, furnished to the Government as a part of the Application. and there have been no changes in the
121 character of its assets or in its financial condition except such changes as are necessary and incidental to the ordinary and usual conduct of the Borrower's affairs;

(c) *Fees and Commission.* It has not and does not intend to pay any bonus, fee or commission in order to secure the loan or grant hereunder;

(d) *Affirmation.* Every statement contained in this Agreement, in the application, and in any supplement thereto or amendment thereof, and in any other document submitted to the Government is correct and complete, and no relevant fact materially affecting the Bonds, the security therefor, the Grant or the Project, or the obligations of the Borrower under this Agreement has been omitted therefrom.

4. *Sale of Bonds by the Government.* The Borrower will take all such steps as the Government may reasonably request to aid in the sale by the Government of any or all of the Bonds. Upon request, the Borrower will furnish to the Government or to any purchaser or purchasers from the

Government of 25 per centum of the Bonds, information for the preparation of a bond circular in customary form, signed by the proper official of the Borrower, containing such data as the Government or such purchaser or purchasers may reasonably request concerning the Borrower and the Project.

5. *Expenses.* The Government shall be under no obligation to pay any costs, charges or expenses incident to compliance with any of the duties or obligations of the Borrower under this Agreement including, without limiting the generality of the foregoing, the cost of preparing, executing and delivering the Bonds, and any legal, engineering and accounting costs, charges or expenses incurred by the Borrower.

6. *Waiver.* Any provision of this Agreement may be waived or amended with the consent of the Borrower and the written approval of the Administrator, without the execution of a new or supplemental agreement.

7. *Interest of Member of Congress.* No Member
122 of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.

8. *Validation.* The Borrower hereby covenants that it will institute, prosecute and carry to completion insofar as it may be within the power of the Borrower, any and all acts and things to be performed or done to secure the enactment of legislation or to accomplish such other proceedings, judicial or otherwise, as may be necessary, appropriate or advisable to empower the Borrower to issue the Bonds and to remedy any defects, illegalities and irregularities in the proceedings of the Borrower relative to the issuance of the Bonds and to validate the same after the issuance thereof to the Government, if in the judgment of the Administrator such action may be deemed necessary, appropriate or advisable. The Borrower further covenants that it will procure and furnish to the Government, as a condition precedent to the Government's obligations hereunder a letter from the Governor of the State stating that if in the judgment of the Administrator it may be advisable to enact legislation to empower the Borrower to issue the Bonds or to remedy any defects, illegalities or irregularities in the proceedings of the Borrower relative to the issuance thereof or to validate the same, said Governor will

recommend and cooperate in the enactment of such legislation.

9. *Miscellaneous.* This Agreement shall be binding upon the parties hereto when a copy thereof, duly executed by the Borrower and the Government, shall have been received by the Borrower. This Agreement will be governed by and be construed in accordance with the laws of the State.

10. *Naming of Project.* The Project shall never be named except with the written consent of the Administrator.

11. *Undue Delay by the Borrower.* If in the opinion of the Administrator, which shall be conclusive, the Borrower shall delay for any unreasonable time in carrying out any of the duties or obligations to be performed by it under the terms of this Agreement, the Administrator may cancel this Agreement.

12. *Construction of Agreement.* If any provision
123 of this Agreement shall be invalid in whole or in part, to the extent it is not invalid it shall be valid and effective and no such invalidity shall effect, in whole or in part, the validity and effectiveness of any other provision of this Agreement or the rights or obligations of the parties hereto, provided, in the opinion of the Administrator, the Agreement does not then violate the terms of the Act.

IN WITNESS WHEREOF, the CITY OF IOWA CITY, JOHNSON COUNTY, STATE OF IOWA and the UNITED STATES OF AMERICA have respectively cause this Agreement, to be duly executed as of the day and year first above written.

CITY OF IOWA CITY
By .....
.....

124 P. W. 42231-23

Federal Emergency Administration of Public Works

Washington, D. C., Oct. 7, 1935
(Date)
PWA Docket No. 7738.

City of Iowa City,
Johnson County, Iowa.

1. The United States of America (herein called the "Government") hereby offers to aid in financing the construc-

tion and equipping of an electric plant and distribution system (herein called the "Project") by making a grant to the City of Iowa City (herein called the "Applicant") in the amount of 45 percent of the cost of the Project. In no event will the grant be in excess of $413,000.

2. The Government will be under no obligation to make any grant, unless the Applicant has complied with the provisions of PWA Circular D, dated September 20, 1935.

UNITED STATES OF AMERICA
Federal Emergency Administrator of Public Works

By HORATIO B. HACKETT
Assistant Administrator.

Exhibit "C"

125 PWA Form No. 199

September 20, 1935

Federal Emergency Administration of Public Works

Harold L. Ickes, Administrator

P.W.A. Circular D

Relating to Certain Grants Under the Emergency Relief Appropriation Act of 1935

Note.—If local laws prevent the applicant from complying with the provisions set forth herein, the applicant should notify the Federal Emergency Administrator of Public Works.

Exhibit "D"

126 I. General Provisions

1. *Prerequisites to Government's Obligation.*—The United States of America (hereinafter called the "Government") shall be under no obligation to the applicant to whom the offer is made (hereinafter called the "Applicant") to make any grant:

(a) *Representation.*—If any representation made by the Applicant in its application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Applicant shall be incorrect or incomplete in any material respect;

(b) *Cost of Project.*—If it appears that the Applicant will not be able to obtain any funds which, in addition to the sum allotted by the Government, shall be necessary to complete the project described in the Government's offer (hereinafter referred to as the "Project");

(c) *Compliance.*—If the Applicant shall not have complied with all the provisions contained or referred to in this Circular theretofore to be complied with by the Applicant.

2. *Interest of Member of Congress.*—No member of or Delegate to the Congress of the United States of America shall be allowed to participate in the funds made available for the construction of the Project or in any benefit arising therefrom.

3. *Bonus or Commission.*—The Applicant shall not pay any bonus or commission for the purpose of obtaining an approval of the application.

4. *Information.*—The Applicant shall furnish the Government with reasonable information and data concerning the construction, cost, and progress of the work.

5. *Insurance.*—The Applicant shall carry reasonable and adequate insurance upon the completed Project or any completed part thereof accepted by the Applicant or the system of which the Project is a part.

6. *Name of Project.*—The Applicant shall not
127 name the Project for any living person.

II. Grant Payments

1. *Advance Grant.*—After the receipt by the Applicant of an offer from the Government to make a grant (hereinafter called the "Offer"), the Applicant may request an advance on account of the grant in an amount not exceeding 15 per cent of the previously estimated cost of the Project. This advance grant may be used for paying architectural, engineering, and planning fees, costs of surveys, borings, and other preliminary investigations, costs of preparation of plans, specifications, and other forms of proposed contract documents, and costs of advertisements for

bids for contracts, but not in payment for the acquisition of lands, easements, or rights-of-way. The request for this advance grant must be accompanied by a signed certificate of purposes in which must appear in reasonable detail the purposes for which such advance grant will be used.

2. *Intermediate Grant Requisitions.*—At any time after the Applicant has deposited in the Construction Account its share of the cost of the Project (hereinafter called the "Applicant's Funds"), if the Applicant has so requisitioned and if such requisition is accompanied by a signed certificate of purposes in which appear in reasonable detail the purposes for which the funds will be used, and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount representing the difference between the advance grant and an amount equal to 25 percent of said previously estimated cost of the Project. When the Project shall be approximately 70 percent completed, the Applicant may file its requisition for an additional grant in an amount equal to 10 percent of the previously estimated cost of the Project.

The intermediate grant requisitions will be honored if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of this Circular relating thereto.

3. *Final Grant Payment.*—At any time after com-
128 pleting the Project, the Applicant may file a requisition requesting the remainder of the grant which, together with all previous payments on account of such grant, shall be an amount equal to 45 percent of the cost of the Project, but not to exceed, in any event, the amount of the grant set forth in the Government's Offer. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has progressed in accordance with the provisions of this Circular relating thereto.

4. *Construction Account.*—A separate account or accounts (hereinafter collectively called the "Construction Account") shall be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation and of the Federal Reserve System. The advance grant,

the intermediate grants, the Applicant's Funds and the final grant, shall be deposited in the Construction Account, promptly upon receipt thereof.

5. *Disbursement of Moneys in Construction Account.*— Moneys in the Construction Account shall be expended only for such purposes as shall have been previously specified in a certificate of purposes filed with and accepted by the Government.

III. Construction Policies.

To effectuate the purposes of the Emergency Relief Appropriation Act of 1935, the Federal Emergency Administration of Public Works has adopted the policy:

(a) That if the Project is to be constructed under contract, contracts should be awarded to the lowest responsible bidder pursuant to public advertisement and that every opportunity be given for free, open and competitive bidding for contracts for construction and contracts for the purchase of materials and equipment. Advertisements for bids should be made once a week for two consecutive weeks in such newspapers or other publications as will reasonably insure adequate publicity, and the bids should be opened within a reasonable time after 14 days from the date
129 of the first publication.

(b) That the use in the specifications or otherwise of the name of a proprietary product or the name of the manufacturer or vendor to define the material or article required, unless such name is followed by the term "or Equal" is considered contrary to the policy of free, open and competitive bidding. Where such a specification is used in lieu of descriptive detail of substance and function, the term "or Equal" is to be liberally construed so that any material or article which will perform adequately the duties imposed by the general design will be considered satisfactory.

(c) That, in determining the lowest bidder for the supplying of materials and equipment, the Applicant may, in the interest of standardization or ultimate economy, award the contract to other than the actual lowest bidder.

(d) That, in determining the responsibility of bidders, the following elements will be taken into consideration: Whether the bidder involved (1) maintains a permanent

place of business; (2) has adequate plant equipment to do the work properly and expeditiously; (3) has a suitable financial status to meet obligations incident to the work; and (4) has appropriate technical experience.

(e) That, in order to insure completion of the Project within the funds available for the construction of the Project, faithful performance of construction contracts will be assured by requiring performance bonds written in an amount equal to 100% of the contract price by one or more corporate sureties financially able to assume the risk and that such bonds will be further conditioned upon the payment of all persons supplying labor and furnishing materials for the construction of the Project, except where it is required by local law that protection for labor and materialmen be provided by a bond separate from the performance bond. In the latter case, the Administration considers adequate a performance bond in an amount equal to 100% of the contract price supplemented by a separate labor and materialmen's bond in an amount not less than 50% of the contract price.

However, where the contract price exceeds
130 $1,000,000, and the obtaining of a bond written in such amount is difficult, a bond in an amount not less than 50% of the contract price is considered adequate.

(f) That, if the work on any proposed construction contract is hazardous, the contractor will be required to provide public liability insurance and property damage insurance in amounts reasonably sufficient to protect the contractor and each subcontractor.

(g) That minimum or other wage rates required to be predetermined by State law or local ordinance shall be predetermined in accordance therewith, and incorporated in the appropriate contract documents or that, in the absence of applicable law or ordinance, the Applicant shall predetermine minimum wage rates, in accordance with customary local rates, for all the trades and occupations to be employed on the Project, and incorporate them in the appropriate contract documents.

The Applicant is Advised That Since the Honoring of Grant Requisitions by the Government Will Depend Upon the Government's Being Assured That the Applicant Pro-

poses to Construct the Project in Accordance With the Established Policies and Regulations Contained in This Circular, it Would be to the Mutual Advantage of the Applicant and the Government for the Applicant to Submit, Prior to the Advertising for Bids, to the Office of the State Director, P.W.A., All Proposed Contract Documents For Construction, Material and Equipment Contracts, Including the Plans and Specifications, and to Submit to the Office of the State Director the Determination by the Applicant of the Lowest Responsible Bidder for Each Contract Prior to the Award Thereof. For the Same Reason, it is Advisable That Applicant Submit to the Office of the State Director, P.W.A., Proposed Contracts for Architectural and Engineering Services. Further, although Specific Extra or Change Orders May not Appear to Constitute Material Changes in the Project for the Construction of Which Funds are Being Made Available, Since it may Later be Found That Such Extra or Change Orders Have in Fact Affected the Engineering or Financial Soundness of the Project, it is Advisable That the Applicant Notify the Office of the State Director, P.W.A., of All Contemplated Extras and Changes.

(h) That work shall be commenced as quickly as
131 possible after funds are made available and be continued to completion with all practicable dispatch in an efficient and economical manner.

(i) That the Project will be constructed in accordance with the following rules and regulations which will be incorporated verbatim as a separate chapter in all contracts (except subcontracts) for work to be performed at the site of the Project:

Construction Regulations

1. *Employment Services and Labor Preferences.*—With respect to all persons employed on projects[1], except as otherwise[2], provided in Regulation No. 2:

(a) Such persons shall be referred for assignment to such work by the United States Employment Service, and

[1] The Term "projects" or "project" as here used means the portion of project covered by this contract.

[2] Exception relates only to employees of the owner. Regulation No. 2 is Executive Order No. 7060, approved by the President June 5, 1935.

(b) Preference in employment shall be given to persons from the public relief rolls, and, except with the specific authorization of the Works Progress Administration, at least 90 percent of the persons employed on any project[1] shall have been taken from the public relief rolls:

Provided, however, that, expressly subject to the requirement of subdivision (b), the supervisory, administrative, and highly skilled workers on the project[1], as defined in the specifications[2], need not be so referred by the United States Employment Service.

2. *Qualifications for Employment.*—(a) No persons
132 currently serving sentence to a penal or correctional institution shall be employed on the project[1].

(b) No person under the age of sixteen (16) years, and no one whose age or physical condition is such as to make his employment dangerous to his health or safety, or the health and safety of others, may be employed on the project[1]. This paragraph shall not be construed to operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

(c) Except as specifically provided aboye, workers who are qualified by training and experience and certified for work on the project by the United States Employment Service shall not be discriminated against on any grounds whatsoever. The contractor may dismiss any employee not qualified to perform the work for which he has been referred, subject to disapproval by the owner.

(d) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerned activities for the purpose of collective bargaining or other mutual aid or protection. No employee and no one seeking employment shall be required as a condition of employment to join any company union or

[1] The term "projects" or "project" as here used means the portion of the project covered by this contract.

[2] The term "specifications" as here used means any one of the contract documents.

to refrain from joining, organizing, or assisting a labor organization of his own choosing.

3. *Hours of Work.*—(a) Except in case of emergency:

(1) The maximum hours of work for manual labor shall be 8 hours per day and 130 hours per month. On projects located at points so remote and inaccessible that camps or floating plants are necessary, the maximum hours of
133 work for manual labor shall be 8 hours per day and 40 hours per week.

(2) The maximum hours of work for cooks, camp assistants, and clerical and other nonmanual employees such as watchmen, policemen, and messengers, shall be 8 hours per day and 40 hours per week.

(3) Administrative and supervisory employees, including executive employees, timekeepers, and storekeepers, who perform in a work-week not more than 15 hours of manual labor (or, in case the Project is being constructed on a 40-hours week basis, not more than 20 hours) shall not be subject to any limitation of hours of work.

(4) Wherever practicable, the contractor shall perform the work in at least double shifts of labor, unless otherwise provided in this contract. The contractor shall not knowingly employ under this contract any person engaged in any other gainful occupation whose weekly hours of labor on such occupation, together with his hours of labor on the Project, exceed the limitations of hours prescribed for employees of his classification under this contract.

(b) Nothing in these regulations is intended to authorize hours or days of work in excess of the limitations of any applicable law or regulation.

4. *Wages and Pay Rolls.*—(a) There shall be paid each employee engaged in the trade or occupation listed below not less than the hourly wage rate set opposite the same, namely:

Trade or occupation	Hourly Wage Rate
.....	.....
.....	.....

(Insert Wage Schedule Here)

.....	.....
.....	.....

If after the award of this contract it becomes
134 necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than such hourly rate of wage, fairly comparable to the above rates and such minimum wage rate shall be retroactive to the time of the initial employment of such person in such trade or occupation.

(b) Unless otherwise provided by law, claims or disputes pertaining to the classification of labor under this contract shall be decided by the Owner whose decision shall be binding on all parties concerned.

(c) All employees shall be paid in full, at least once each week within 3 days after the close of the pay-roll period, in lawful money of the United States, unless otherwise recommended in writing by the State Director: Provided, however, that this paragraph shall not be construed to prohibit deductions required by law and collection of obligations by legal process.

(d) A clearly legible statement of the minimum wage rate to be paid each trade and occupation employed under this contract and of the authorized deductions therefrom, if any, shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(e) The contractor and each subcontractor shall prepare the pay rolls upon forms to be prescribed and in accordance with instructions to be furnished by the Works Progress Administration. Not later than the day following the payment of the wages a certified legible copy of each pay roll, whether paid by the contractor or any subcontractor, shall be transmitted by the contractor to such office as may be designated by the Works Progress Administration. The contractor and each subcontractor shall submit reports at such times and on such forms as may be required by the Works Progress Administration, covering purchases of, and requisitions for, materials, together with such other information as may be required to determine the progress and status of the completion of the work on the Project. Such pay rolls shall be sworn to in accordance with the "Regulations Issued Pursuant to So-called Kickback Statute", issued jointly by the Secretary of the Trea-

sury and the Secretary of the Interior on January 12,
135 1935, a copy of which is herein elsewhere set forth.

5. *Accident Prevention.*—Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable law or regulation.

6. *Insurance.*—The contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

(a) *Compensation Insurance.*—The contractor shall take out and maintain during the life of this contract adequate Workmen's Compensation Insurance for all his employees employed at the site of the Project and, in case any work is sublet, the contractor shall require the sub-contractor similarly to provide Workmen's Compensation Insurance for the latter's employees, unless such employees are covered by the protection afforded by the contractor. In case any class of employees engaged in hazardous work under the contract at the site of the Project is not protected under the Workmen's Compensation statute, or in case there is no applicable Workmen's Compensation statute, the contractor shall provide, and shall cause each subcontractor to provide, ...
for the protection of his employees not otherwise protected.

(b) *Public Liability and Property Damage Insurance.*—The contractor shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this contract, from claims for damages for personal injury, including wrongful death, as well as from claims for property damages, which may arise

from operations under this contract, whether such
136 operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The amounts of such insurance shall be as as follows:

Public Liability Insurance in an amount not less than $ ..... for injuries, including wrongful death, to any one person, and, subject to the same limit for each person, in an amount not less than $, on account of one accident, and Property Damage Insurance in an amount not less than $

Provided, however, that the Owner may accept insurance covering a subcontractor in character and amounts less than the standard requirements set forth under this subparagraph (b) where such standard requirements appear excessive because of the character or extent of the work to be performed by such subcontractor.

(c) The following special hazards shall be covered by rider or riders to the policy or policies required under subparagraph (b) hereof or by separate policies of insurance in amounts as follows:

....

....

7. *Materials.*—(a) *Domestic.* Unless contrary to law, in the peformance of this contract the contractor, subcontractors, materialmen, or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, except, unless otherwise required by law, foreign materials, articles, or supplies may be purchased if the foreign materials, articles, or supplies are lower in cost after the following differentials are applied in favor of domestic articles, materials, or supplies:

On purchases where the foreign bid is $100 or less,
137 a differential of 100% will apply;

On purchases where the foreign bid exceeds $100, but is less than $10,000, a differential of 25% will apply;

On purchases where the foreign bid is $10,000 or more, a differential of 15% will apply.

(b) *Convict Made.*—No materials manufactured or produced in a penal or correctional institution shall be used on or incorporated in the Project, unless required by law.

8. *Inspection.*—(a) The Administrator, through his authorized agents, and the Works Progress Administration, through its authorized agents, shall have the right to inspect all work and materials, shall have access to all pay rolls, records of personnel, invoices of material, and all other data and records relevant to the performance of this contract.

(b) Facilities shall be provided as set forth in the specifications for the use of the Government Inspector.

9. *Construction Reports.*—The contractor shall submit to the Owner schedules of the cost of labor, costs and quantities of materials and other items, supported as to correctness by such evidence as, and in such form as, the Administrator through his authorized agents may require. Submission of this information shall be a condition precedent to any payment under this contract. In addition to any records herein required, the following records, on forms to be furnished by the Public Works Administration, are required:

(1) Detailed Estimate (Contract "breakdown").

(2) Construction Schedule (Chart of Contemplated Progress).

(3) Periodical Estimates for Partial Payment.

10. *Department of Labor Reports.*—The contractor and each subcontractor shall report to the United States Department of Labor monthly, within five days after the close of each calendar month upon forms to be prescribed, and in accordance with instructions to be furnished, by the
138 United States Department of Labor, covering the number of persons on their respective pay rolls directly connected with the Project, the aggregate amounts of such pay rolls and the man-hours worked, and an itemized statement of the total expenditures for materials. The contractor shall also furnish to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

11. *Payments.*—(a) The contractor shall provide all labor, services, materials, and equipment necessary to perform and complete the work under this contract. Except as otherwise approved by the Owner, the contractor (1) shall pay for in full all transportation and utility services on or before the 20th day of the month following the calendar month in which such services are rendered, and (2) shall pay for all materials, tools, and other expendible equipment, to the extent of 90 per cent of the cost thereof, on or before the 20th day of the month following the calendar month in which such materials, tools, and equipment are delivered to the Project, and the balance of the cost within 30 days after completion of that part of the work in or on which such materials, tools, and other equipment are incorporated or used.

(b) In the absence of other provisions in this contract more favorable to the subcontractor, the contractor shall pay each subcontractor, within five days after each payment made to the contractor, the amount allowed the contractor for and on account of the work performed by the subcontractor, to the extent of the subcontractor's interest therein.

(c) Within the first 15 days of each calendar month the Owner will make partial payment to the contractor for work performed during the preceding calendar month on estimate certified by the contractor, the Owner, and the Government Inspector. Except as otherwise provided by law, 10 per cent of each approved estimate shall be retained by the Owner until final completion and acceptance of all work covered by this contract, provided that at any time after 50 per cent of the work covered by this contract has been completed, if progress satisfactory to the Owner and the Government Inspector is being made in accordance with the terms of this contract, subsequent approved estimates will be paid in full unless otherwise pro-
139 vided in this contract.

(d) Compliance with the provisions of subparagraphs (a) and (b) of this paragraph is a condition precedent to partial payment under subparagraph (c) hereof.

12. *Wage Claims and Adjustments.*—In cases of underpayment of wages, the Owner will withhold from the contractor out of payments due an amount sufficient to pay persons employed on the work covered by this contract the

difference between the wages required to be paid under this contract and the wages actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Owner, for and on account of the contractor, to the respective employees to whom they are due.

13. *Signs.*—The contractor shall furnish signs bearing the legend:

"Federal Works Project No. ——
Public Works Administration"

as required in the specifications and shall erect the same at such locations as may be designated by the Owner.

14. *Subcontracts.*—(a) The contractor shall perform, directly and without subcontracting, not less than 25 per cent of the construction, to be calculated on the basis of the total contract price. No part of this contract shall be sublet without the approval of the Owner.

(b) If the contractor shall sublet any part of this contract, the contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor and of the persons either directly or indirectly employed by his subcontractor, as he is for the acts and omissions of persons directly employed by himself.

(c) Paragraphs 1 to 5 inclusive, 7 to 10 inclusive, 11 (a) and (b), 17, 18, 19, the Regulations Issued Pursuant to So-called "Kick Back Statute" and the penalty clauses set forth in Section 9 of the Act and Section 35 of the Criminal Code, as amended, shall be inserted verbatim in all construction subcontracts under this contract.

140 15. *Assignment of Contract.*—The contractor shall not assign this contract or any part hereof without the approval of the Owner, nor without the consent of surety unless the surety has waived its right to notice of assignment.

16. *Termination for Breach.*—In the event that any of the provisions of this contract are violated by the contractor or by any of his subcontractors, the Owner may serve written notice upon the contractor and the surety of its intention to terminate such contract, such notices to contain the reasons for such intention to terminate the contract, and, unless within 10 days after the serving of such notice upon the contractor such violation shall cease and satisfactory ar-

rangement for correction be made, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the contract, provided however, that if the surety does not commence performance thereof within 30 days from the date of the mailing to such surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract for the account and at the expense of the contractor, and the contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

17. *Priority of Construction Regulations.*—Any provisions of this contract in conflict or inconsistent with the requirements of these Regulations, except such provisions as are required by applicable law or regulation, shall be void to the extent of such conflict or inconsistency.

18. *Definitions.*—The following terms as used in this contract are respectively defined as follows:

"Act": The Emergency Relief Appropriation Act of 1935.

"P.W.A." or "Public Works Administration":

The Federal Emergency Administration of Public
141 Works.

"Administrator": The Federal Emergency Administrator of Public Works.

"State Director": State Director (P.W.A.), his duly authorized representative or any person designated by the Administrator to perform his duties or functions.

"Government Inspector": The representative of the Inspection Division (P.W.A.).

"Owner": The public body, agency or instrumentality which is a party hereto and for which this contract is to be performed.

"Emergency": A temporary unforeseen occurrence or combination of circumstances which endangers life or property and calls for immediate action or remedy.

"Material": Materials incorporated in the project, or used or consumed in the performance of the work.

"Subcontractor": A person, firm, or corporation supplying labor and materials or labor for work at the site of the project.

"Work at Site of Project": Work to be performed, including work normally done, on the location of the project.

19. *Paragraphs 1, 2(a), (b) and (c), 3(a) (1) and (2), 4(e), 8(a) and 10 incorporate rules and regulations issued by the President under the authority of section 6 of the Act. Any willful violation of any such rule or regulation is punishable by fine of not to exceed $1,000.*

Regulations Issued Pursuant to So-Called "Kick-Back Statute"

Pursuant to the provisions of Public Act, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior hereby jointly promulgate the following regulations:

Section 1. Said Act reads as follows:

142 To effectuate the purpose of certain statutes concerning rates to pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dimissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

Sec. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

Section 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

State of .....

County of ....., ss:

I, ...(Name the party signing affidavit) .....(Title), do hereby certify that I am (the employee of) .....(name of contractor or subcontractor) who supervises the payment of the employees of said contractor (subcontractor); that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of ..... (project), for the weekly pay roll period from the ..... day of ....., 193..., to the ..... day of ....., 193...; that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

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Sworn to before me this .....day of ..... 193...

Section 3. Said affidavit shall be executed and sworn to by the officer of employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within three days after the payment of the pay roll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having

control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such three-day period to the Federal agency having control of the project.

Section 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its officer or employee who supervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in
144 the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

Section 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

Section 6. These regulations shall become effective on January 15, 1935.

The clause in the pay-roll affidavit which reads " • • • that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor • • •" is construed by the Public Works Administration to mean:

(a) Wages due are the wages earned during the pay period by each person employed by the contractor, less any deductions required by law.

(b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.

(c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause " • • • that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made" does not

apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.

The "Regulations Issued Pursuant to So-Called Kick-Back Statute" shall not be construed to prohibit deductions required by law or deductions for health, sickness, unemployment, or other similar benefits voluntarily authorized by permanent employees of equipment suppliers engaged in installation of the equipment at the site of the project.

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Penalty

Section 9 of the Emergency Relief Appropriation Act of 1935 reads as follows:

"Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of this joint resolution, or diverts, or attempts to divert, or assists in diverting for the benefit of any person or persons not entitled thereto, any moneys appropriated by this joint resolution, or any services or real or personal property acquired thereunder; or who knowingly, by means of any fraud, force, threat, intimidation, or boycott, deprives any person of any of the benefits to which he may be entitled under the provisions of this joint resolution, or attempts so to do, or assists in so doing, shall be deemed guilty of a misdemeanor and shall be fined not more than $2,000 or imprisoned not more than 1 year, or both".

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements * * * or use or cause to be made or used any false * * * account, claim certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any governmental department or agency.

Memorandum

JANUARY 16 - 1936.

Preliminary Injunction filed.

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146 *Answer to Bill of Complaint*

Filed March 12 1936

* * * * * *

Come now, Harold L. Ickes, Administrator of the Federal Emergency Administration of Public Works; Horatio B. Hackett, Assistant Administrator thereof; J. J. Madigan, Acting Executive Officer thereof; John Herrick, Executive Assistant thereof; F. E. Schnepfe, Director of Projects Division thereof, Harry L. Hopkins, Administrator of the Works Progress Administration; Henry Morgenthau, Jr., Secretary of the Treasury of the United States; W. A. Julian, Treasurer of the United States, and Guy F. Allen, Chief Disbursing Officer, Division of Disbursement, Treasury Department of the United States, defendants in the above-entitled case, and each of them, and for answer to the Bill of Complaint, say:

I.

These defendants are informed that plaintiff is a corporation incorporated under the laws of the State of Delaware, but are without knowledge as to any of the other allegations contained in Paragraph I of the Bill of Complaint.

147 II.

The defendants Harold L. Ickes, Horatio B. Hackett, John Herrick, J. J. Madigan, and F. E. Schnepfe (hereinafter jointly referred to as "the P.W.A. defendants") admit that defendant Ickes was appointed Federal Administrator of Public Works by Executive Order of the President dated July 8, 1933; admit that defendant Hackett is Assistant Administrator, defendant Herrick is Executive Assistant, defendant Madigan is Executive Officer, and defendant Schnepfe is Director of the Projects Division of P.W.A.

The P.W.A. defendants, and each of them, say that they are without knowledge as to any of the allegations with respect to defendants Hopkins, Morgenthau, Julian, and Allen; said defendants deny each and every allegation of Paragraph II of the bill of complaint except as specifically admitted or qualified herein.

The defendant Harry L. Hopkins admits that he is the duly appointed, qualified and acting Administrator of the

Works Progress Administration, and that he was appointed by an Executive Order of the President of the United States (No. 7034), (but that said Order was dated May 18th, 1935, and not May 6th, 1935, as alleged in the Bill of Complaint). but specifically denies that he is exercising, or threatening to exercise, performing or threatening to continue to perform, any acts in his official capacity, or otherwise, under the National Industrial Recovery Act, or under the Emergency Relief Appopriation Act of 1935, complained of by this plaintiff. Further answering, defendant Hopkins avers that he is wholly without interest as to the outcome of this controversy; that his presence as a party defendant to the instant case is without materiality as to the jurisdiction of the Court or as to the execution of a decree
148 granting the relief prayed, should the same issue; that the issuance of a decree against him could have no effect neither in fact or in law in regard to the performance by the other defendants hereto of the alleged acts or alleged proposed acts complained of.

The defendants Morgenthau, Julian, and Allen (hereinafter referred to as the "Treasury defendants") admit the allegations contained in Paragraph II in so far as it concerns them, except that as to the allegations concerning the Treasurer of the United States, they deny that he is in control of the disbursement of public funds of the United States and aver that he is in control only of the payment of checks drawn upon him, and that with certain minor exceptions not applicable to the instant case, he has no control over the drawing of such checks, and except further that they specifically deny the allegations in the last subparagraphs of Paragraph II, and say that they are not exercising or threatening to exercise, or performing or threatening to perform, any unlawful or unconstitutional acts.

The Treasury defendants, and each of them, say that they are without knowledge as to any of the allegations with respect to the defendants Ickes, Hackett, Herrick, Madigan, Schnepfe and Hopkins; said defendants deny each and every allegation of Paragraph II, except as specifically admitted or qualified herein.

III.

These defendants are advised that the allegations contained in Paragraph III of the bill of complaint are conclu-

sions of law which they are not required to answer, but if construed to be averments of fact, they deny each and every allegation thereof.

IV.

The P.W.A. defendants admit the allegations contained in Paragraph IV of the bill of complaint, but defendant Hopkins and the Treasury defendants say that they are without knowledge as to any of the said allegations.

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V.

These defendants are advised that the allegations contained in Paragraph V of the bill of complaint are conclusions of law which they are not required to answer, but if construed to be averments of fact, they deny each and every allegation thereof.

VI.

The P. W. A. defendants and defendant Hopkins say that they are without knowledge as to any of the allegations contained in Paragraph VI of the bill of complaint, and demand strict proof thereof.

The Treasury defendants admit that the plaintiff is a taxpayer of the United States, but say that information as to the kinds and amounts of taxes paid by plaintiff must be obtained from other offices, that the necessary steps to secure said information have been taken, but that as yet these defendants are without knowledge as to the kinds and amounts of taxes paid by plaintiff. The Treasury defendants further say that they are without knowledge as to any allegation contained in Paragraph VI of the bill of complaint concerning plaintiff's status as taxpayer of the State of Iowa and of the City of Iowa City, and demand strict proof thereof.

VII.

These defendants are without knowledge as to any of the allegations contained in Paragraph VII of the bill of complaint, and demand strict proof thereof.

VIII.

These defendants are without knowledge as to any of the allegations contained in Paragraph VIII of the bill of complaint, and demand strict proof thereof.

150 IX.

These defendants are without knowledge as to any of the allegations contained in Paragraph IX of the bill of complaint, and demand strict proof thereof.

X.

These defendants are without knowledge as to any of the allegations of fact contained in Paragraph X of the bill of complaint, and demand strict proof thereof.

XI.

These defendants are without knowledge as to any of the allegations contained in Paragraph XI of the bill of complaint, and demand strict proof thereof.

XII.

The P. W. A. defendants deny each and every allegation contained in Paragraph XII of the bill of complaint.

Further answering the allegations of such paragraph, said defendants say that they are engaged in administering the provisions of Title II of the National Industrial Recovery Act of 1933 and the Emergency Relief Appropriation Act of 1935; that by the terms of the Emergency Relief Appropriation Act of 1935, and Executive Orders of the President pursuant thereto, the Federal Emergency Administrator of Public Works, with the approval of the President, is authorized, for the purpose of providing work relief and to increase employment by providing for useful projects, to make loans or grants, or both, for projects of States, Territories, Possessions, including sub-divisions and agencies thereof, municipalities, and the District of Columbia, and self-liquidating projects of public bodies thereof, where, in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project.

That upon the adoption of said Act, applications
151 were received from states, municipalities, and other public bodies throughout the United States for aid in financing the construction of a large variety of useful public projects, including, among others, airports, tunnels,

bridges, hospitals, jails, swimming pools, streets and highways, waterworks, sewage and drainage systems, and electric generating, transmission and distribution systems; that all such applications have been carefully examined for the purpose of determining whether the application is authorized by law, and whether the project meets the requirements of the Act of Congress above referred to; that after such examination, the Federal Emergency Administrator of Public Works, and the President, have approved loans and grants to aid in financing the construction of many thousands of useful public projects, having first determined that each such loan or grant meets the requirements of the Emergency Relief Appropriation Act of 1935, and Executive Orders of the President pursuant thereto, and will effectuate the purposes of said Act.

Said defendants further say that the projects which have been approved have not been limited to a particular section of the country, the comprehensive program being national in scope; that the projects have not been limited to any particular type or class, but have been greatly diversified; that defendants have not solicited, urged, or induced the construction of any particular type of useful public project, but have acted only at the instance and request of the municipality concerned; that where application is made for a loan or grant, or both, to finance or aid in financing the construction of a project which will involve competition between a municipality and a privately owned utility company, the Administrator has taken the position that it was

the intention of Congress that the question of
152 whether such competition is desirable should be left

entirely to the municipality concerned; that where, as here, a grant only is made, the Administrator has not given any consideration to the question of rates to be charged by the municipality; that where a loan is made to be repaid out of the revenues of the project and not out of local taxes, the Administrator, in determining whether the loan was reasonably secured, has considered the prospective earnings of the project, and solely for that purpose, the rates which the municipality proposed to charge; that the grant to the City of Iowa City was made pursuant to the policy outlined herein; that the sole aim and desire of

these defendants is to carry out the mandate of Congress as set forth in the Acts herein referred to.

Said defendants further allege that their activities under and pursuant to said statutes and Executive Orders have resulted in a vast increase in employment, and an improvement in the national prosperity, including, among other things, a vast improvement in the credit of municipalities, an increase in the value of municipal bonds and a consequent increase in the assets of national banks and other financial institutions throughout the United States.

The Treasury defendants and defendant Hopkins deny each and every allegation contained in Paragraph XII of the bill of complaint, in so far as it pertains to them, and say that they are without knowledge as to any of the allegations contained in said paragraph in so far as it pertains to other defendants, and demand strict proof thereof.

XIIa.

The P. W. A. defendants admit that on or about January 8th, 1934, the city of Iowa City, Iowa, made application for a loan and grant in the amount of $917,000.00, to be used in financing the construction of a municipal electric
153 plant and distribution system; that in September, 1934, such application was approved by the Administrator and the President, and a loan and grant agreement forwarded to the City; that such application was later withdrawn by the City, and a new application made for a grant only, to aid in financing the construction of such municipal electric plant and distribution system. Defendants further admit that the new application for a grant only, in the sum of $413,000.00, was approved by the Administrator and the President, and that on October 7th, 1935, P. W. A. forwarded to the City an offer to aid in financing the construction of such plant and system, the terms of which are set forth in Exhibits "C" and "D" attached to plaintiff's complaint.

Said defendants further allege that by agreement of the parties, the offer of October 7, 1935, was superseded by an offer dated January 8, 1936, a true and correct copy of which is attached hereto, marked "Exhibit A", and by this reference made a part hereof.

The P. W. A. defendants deny each and every allegation contained in Paragraph XIIa of the bill of complaint, except as hereinabove specifically admitted or qualified.

The Treasury defendants and defendant Hopkins deny each and every allegation contained in Paragraph XIIa of the bill of complaint, in so far as it pertains to them, and say that they are without knowledge as to any of the allegations contained in said paragraph in so far as it pertains to other defendants, and demand strict proof thereof.

XIIb.

The P. W. A. defendants admit that the city of Iowa City would be without authority to establish a municipally owned and operated electric light and power plant and distribution system without obtaining authority there-
154 for from the voters of said City at an election; that an election was held in said City, on April 17th, 1934, on the proposition set forth in Paragraph XIIb of plaintiff's complaint, and that the vote on such proposition is correctly set forth in such paragraph.

The P. W. A. defendants deny each and every allegation contained in such paragraph, except as herein expressly admitted.

The Treasury defendants and defendant Hopkins say that they are without knowledge as to any of the allegations contained in Paragraph XIIb, and demand strict proof thereof.

XIII.

The P. W. A. defendants aver that P. W. A. has offered in writing to make a grant to the City of Iowa City, Iowa, to aid in financing the construction of a municipal electric plant and distribution system; that all of the conditions of said grant are contained in the Government's offer dated January 8, 1936 (Exhibit A), and that there are no conditions, express or implied, except as set forth therein.

The P. W. A. defendants deny each and every allegation contained in Paragraph XIII of the bill of complaint, except as expressly admitted or qualified herein.

The Treasury defendants and defendant Hopkins say that they are without knowledge as to any of the allegations contained in Paragraph XIII of the bill of complaint, and demand strict proof thereof.

XIV.

The P. W. A. defendants say that plaintiff has been afforded an opportunity to present its objections to the approval of the proposed grant, and to the construction of the proposed project, both in person and in writing, and that the objections filed by plaintiff have been given careful consideration.

Said defendants deny each and every allegation
155 contained in Paragraph XIV of the bill of complaint, except as hereinabove expressly admitted or qualified.

The Treasury defendants and defendant Hopkins deny each and every allegation contained in Paragraph XIV of the bill of complaint, in so far as it pertains to them and say that they are without knowledge as to any of the allegations contained in said paragraph in so far as it pertains to other defendants, and demand strict proof thereof.

XV.

The P. W. A. defendants deny each and every allegation contained in Paragraph XV of the bill of complaint.

The Treasury defendants and defendant Hopkins say that they are without knowledge as to any of the allegations of fact contained in Paragraph XV, and demand strict proof thereof.

XVI.

The P. W. A. defendants deny each and every allegation of fact contained in Paragraph XVI of the bill of complaint.

Defendant Hopkins and the Treasury defendants say that they are without knowledge as to any of the allegations contained in Paragraph XVI of the bill of complaint, and demand strict proof thereof.

XVII.

The P. W. A. defendants deny that they have withheld any information from the plaintiff, or that they have refused to comply with any reasonable requests for information.

Said defendants say that they are without knowledge as to any of the other allegations contained in Paragraph

XVII of the bill of complaint, and demand strict proof thereof.

The Treasury defendants deny the allegations of Paragraph XVII in so far as such allegations pertain to them, and say that they are without knowledge as to the remaining allegations contained in Paragraph XVII, and demand strict proof thereof.

156 XVIII.

These defendants are without knowledge as to any of the allegations contained in Paragraph XVIII of the bill of complaint.

XIX.

The P. W. A. defendants deny each and every allegation of fact contained in Paragraph XIX of the bill of complaint. Defendant Hopkins and the Treasury defendants say that they are without knowledge as to any of the allegations of fact contained in Paragraph XIX of the bill of complaint, and demand strict proof thereof.

XX.

These defendants are without knowledge as to any of the allegations contained in Paragraph XX, except that the Treasury defendants say that the funds of the United States are not so segregated that borrowed moneys can be distinguished from other moneys in the Treasury.

XXI.

The P. W. A. defendants admit the allegations contained in Paragraph XXI of the bill of complaint.

Defendant Hopkins says that he is without knowledge as to any of the allegations contained in Paragraph XXI of the bill of complaint, except that he denies that he has taken or intends to take any action whatsoever in regard to the subject matter of this suit, and says that he is without interest as to its outcome.

The Treasury defendants say that the allegations of Paragraph XXI constitute conclusions of law which they are not required to answer; but, if such allegations be construed to be allegations of fact, the Treasury defendants admit that they have been governed in the actions which they have already taken, and will be governed in actions

which they may be called upon to take in future in the instant situation, not only by the provisions of Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195) and of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the Executive Orders and regulations of the President pursuant thereto, but also
157 by the provisions of all other applicable statutes and the Executive Orders and regulations promulgated pursuant thereto.

XXII.

The P. W. A. defendants deny each and every allegation of fact contained in Paragraph XXII of the bill of complaint.

Defendant Hopkins and the Treasury defendants deny each and every allegation of fact contained in Paragraph XXII of the bill of complaint in so far as it pertains to them, and say that they are without knowledge as to any of the allegations contained in said paragraph, in so far as it pertains to other defendants, and demand strict proof thereof.

XXIII.

These defendants are advised that the allegations contained in Paragraph XXIII of the bill of complaint are conclusions of law which they are not required to answer, but if construed to be averments of fact, they deny each and every allegation thereof.

The Treasury defendants, further answering subparagraph (e) aver that the funds of the United States are not so segregated that borrowed funds may be distinguished from other funds in the Treasury.

XXIV.

These defendants deny each and every allegation of fact contained in Paragraph XXIV of the bill of complaint.

XXV.

The P. W. A. defendants admit that, unless restrained, they will make the grant to the City of Iowa City in accordance with the terms of the Government's offer, but deny all other allegations contained in Paragraph XXV of the bill of complaint.

Defendant Hopkins denies each and every allegation contained in Paragraph XXV of the bill of complaint in so far as it pertains to him and says that he is without knowledge as to any of the allegations contained in said paragraph in so far as it pertains to other defendants.

The Treasury defendants admit that, unless re-
158 strained, they will honor vouchers duly and regularly drawn by the defendant Ickes or his duly constituted subordinates, on moneys appropriated by Congress, but deny each and every other allegation of fact, pertaining to them, contained in Paragraph XXV of the bill of complaint, and say that they are without knowledge as to any of the other allegations contained therein, and demand strict proof thereof.

XXVI.

The P. W. A. defendants deny each and every allegation of fact contained in Paragraph XXVI of the bill of complaint.

Defendant Hopkins and the Treasury defendants say that they are without knowledge as to any of the allegations of fact contained in Paragraph XXVI of the bill of complaint, and demand strict proof thereof.

XXVII.

The P. W. A. defendants and defendant Hopkins deny each and every allegation of fact contained in Paragraph XXVII of the bill of complaint.

The Treasury defendants are advised that the allegations contained in Paragraph XXVII of the bill of complaint constitute conclusions of law which they are not required to answer, but if construed to be averments of fact, they say that they are without knowledge thereof, and demand strict proof thereof.

XXVIII.

These defendants admit that the City of Iowa City and members of its governing board are without the jurisdiction of this Court, and that service of process cannot be had upon them in the District of Columbia, but are without knowledge as to the other allegations of Paragraph XXVIII of the bill of complaint.

XXIX

These defendants are without knowledge as to any allegations of Paragraph XXIX of the bill of complaint, and demand strict proof thereof.

XXX

The P. W. A. defendants admit that, unless restrained, they will comply with the terms of the offer (Exhibit "A"), but except as expressly admitted herein, deny each
159 and every allegation of fact contained in Paragraph XXX of the bill of complaint.

Defendant Hopkins denies each and every allegation contained in Paragraph XXX of the bill of complaint in so far as it pertains to him, and says that he is without knowledge as to any of said allegations in so far as they pertain to other defendants.

The Treasury defendants admit that, unless restrained, they will honor vouchers duly and regularly drawn by the defendant Ickes, or his duly constituted subordinates, on moneys appropriated by Congress, but deny each and every other allegation of fact pertaining to them, contained in Paragraph XXX of the bill of complaint.

WHEREFORE, the premises considered, these defendants jointly and severally pray that the bill of complaint be dismissed, with proper costs and charges.

JAMES W. MORRIS,
Assistant Attorney General,

ALEXANDER HOLTZOFF,
Special Assistant to the Attorney General,

JOHN W. SCOTT,
Special Assistant to the Attorney General,

JEROME N. FRANK,
Counsel for Federal Emergency Administration of Public Works.

Attorneys for Defendants.

160 P. W. 47980-12

Endorsed: Copy Conformed to Executed Original Legal Division, P. W. A. Checked Rice Date Jan 10 1936

Exhibit "A"

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

Washington, D. C.,
January 8, 1936.
PWA Docket No. 7738R.

City of Iowa City,
Johnson County, Iowa.

1. *Offer.* The United States of America (herein called the "Government") hereby offers to aid in financing the construction and equipping of an electric plant and distribution system (herein called the "Project") by making a grant to the City of Iowa City (herein called the "Applicant") in the amount of 45 percent of the cost of the Project. In no event will the grant be in excess of $413,000.

2. *Conditions Precedent.* The Government will be under no obligation to the Applicant to make any grant:

(a) *Cost of Project:* If it appears that the Applicant will not be able to obtain any funds which, in addition to the sum allotted by the Government, shall be necessary to complete the Project;

(b) *Plans and Specifications and Certificate of Purposes:* If the Applicant shall not have filed with the Government plans and specifications for the Project accompanied by a certificate of purposes setting out in detail the amounts and purposes of the expenditures which the Applicant proposes to make in connection with the Project, and the Government shall not have accepted such plans and specifications and such certificate of purposes as showing that the Project will be constructed in such a manner as to comply with the Emergency Relief Appropriation Act of 1935 in all respects.

3. *Interest of Member of Congress.* No Member of or Delegate to the Congress of the United States of America shall be allowed to participate in any agreement arising from the performance of this offer or in the funds hereby made available for the construction of the Project, or to any benefit arising therefrom.

4. *Bonus or Commission.* The Applicant shall not pay any bonus or commission for the purpose of obtaining an approval of the application.

5. *Information.* The Applicant shall furnish the
161 Government with reasonable information and data concerning the construction, cost, and progress of the work.

6. *Insurance.* The Applicant shall carry reasonable and adequate insurance upon the completed Project or any completed part thereof accepted by the Applicant or the system of which the Project is a part.

7. *Name of Project.* The Applicant shall not name the Project for any living person.

8. *Grant Payments:*

(a) *Advance Grant:* Upon receipt of this offer, the Applicant may request an advance on account of the grant in an amout not exceeding 15 percent of the estimated cost of the Project. This advance grant may be used for paying architectural, engineering, and planning fees, costs of surveys, borings, and other preliminary investigations, cost of preparation of plans, specifications and other forms of proposed contract documents, and costs of advertisements for bids for contracts, but not in payment for the acquisition of lands, easements, or rights-of-way. The request for this advance grant shall be accompanied by a signed certificate of purposes in which shall appear in reasonable detail the purposes for which such advance grant will be used;

(b) *Intermediate Grant Requisitions:* At any time after the Applicant has deposited in the Construction Account its share of the cost of the Project (hereinafter called the "Applicant's Funds"), if the Applicant has so requisitioned and if such requisition is accompanied by a signed certificate of purposes showing in reasonable detail the purposes for which the funds will be used, and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount representing the difference between the advance grant and an amount equal to 25 percent of said previously estimated cost of the Project. When the Project shall be approximately 70 percent completed the Applicant may file its requisition for an additional grant in an amount which, together with the amount previously paid on

account of the grant, is equal to 35 percent of the cost of the Project, but in no event in an amount exceeding the amount set forth in Paragraph 1 hereof.

The intermediate grant requisitions will be honored if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of this offer relating thereto;

(c) *Final Grant Payment:* At any time after completing the Project, the Applicant may file a requisition requesting the remainder of the grant which, together with all previous payments on account of such grant, shall be an
162 amount not in excess of 45 percent of the actual cost of the Project upon completion, but not to exceed, in any event, the amount of the grant set forth in Paragraph 1 hereof. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has been completed in accordance with the provisions of this offer relating thereto;

(d) *Construction Account:* A separate account or accounts (herein collectively called the "Construction Account") shall be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation and of the Federal Reserve System. The advance grant, the intermediate grants, the Applicant's Funds and the final grant shall be deposited in the Construction Account, promptly upon the receipt thereof;

(e) *Disbursement of Moneys in Construction Account:* Moneys in the Construction Account shall be expended only for such purposes as shall have been previously specified in the certificate of purposes filed with and accepted by the Government.

9. *Construction of Project.* The following policies have been adopted by the Federal Emergency Administration of Public Works in order to effectuate the purposes of the Emergency Relief Appropriation Act of 1935, and the making of the grant herein set forth shall be subject to the condition that the Applicant, in the exercise of its lawful discretion shall adopt said policies and comply therewith in the construction of the Project:

(a) That if the project is to be constructed under contract, contracts should be awarded to the lowest responsible bidder pursuant to public advertisement and that every

opportunity be given for free, open and competitive bidding for contracts for construction and contracts for the purchase of materials and equipment;

(b) That the use in the specifications or otherwise of the name of a proprietary product or the name of the manufacturer or vendor to define the material or product required, unless such name is followed by the term "or equal", is considered contrary to the policy of free, open and competitive bidding. Where such a specification is used in lieu of descriptive detail of substance and function, the term "or equal" is to be literally construed so that any material or article which will perform adequately the duties imposed by the general design will be considered satisfactory;

(c) That, in determining the lowest bidder for the supplying of materials and equipment, in the interest of standardization or ultimate economy, the contract may be awarded to other than the actual lowest bidder;

(d) That, in order to insure completion of a project within the funds available for the construction thereof, faithful performance of construction contracts will be assured by requiring performance bonds written in an amount equal to 100% of the contract price by one or more corporate sureties financially able to assume the risk
163 and that supplying labor and furnishing materials for the construction of the project, except in those cases in which it is required by the law of Iowa that protection for labor and materialmen be provided by a bond separate from the performance bond. In such case, a performance bond in an amount equal to 100% of the contract price supplemented by a separate labor and materialmen's bond in an amount not less than 50% of the contract price will be adequate;

(e) That, if the work on any proposed construction contract is hazardous, the contractor will be required to provide public liability insurance and property damage insurance in amounts reasonably sufficient to protect the contractor and each subcontractor;

(f) That minimum or other wage rates required to be predetermined by the law of Iowa or local ordinance shall be predetermined, by the public body constructing a project, in accordance therewith, and incorporated in the ap-

propriate contract documents. In the absence of applicable law or ordinance, such public body shall predetermine minimum wage rates, in accordance with customary local rates, for all the trades and occupations to be employed on the Project, and incorporate them in the appropriate contract documents;

(g) That the work shall be commenced as quickly as possible after funds are made available and be continued to completion with all practicable dispatch in an efficient and economical manner;

(h) That the project will be constructed in accordance with the provisions of the attached Exhibit A which is hereby made a part hereof; to insure this purpose appropriate provisions will be incorporated in all contracts (except subcontracts) for work to be performed at the site of the project. (Exhibit A has been so worded that the provisions thereof, may, if the public body constructing a project so desires, be inserted verbatim in such construction contract).

10. This offer is made with the express understanding that the grant herein described is not conditioned upon compliance by the Applicant with any conditions not expressly set forth herein. There are no other agreements or understandings between the Applicant and the Government or any of its agencies in any way relating to said Project, or to the financing or the construction thereof.

UNITED STATES OF AMERICA
Federal Emergency Administrator of Public Works

By (Sgd.) HORATIO B. HACKETT
Assistant Administrator.

164 P.W.-L-Form No. 48.

Exhibit "A"

1. *Employment Services and Labor Preferences.* With respect to all persons employed on projects, except as otherwise provided in Regulation No. 2 (Executive Order No. 7060, approved by the President June 5, 1935):

(a) Such persons shall be referred for assignment to such work by the United States Employment Service, and

(b) Preference in employment shall be given to persons from the public relief rolls, and, except with the specific authorization of the Works Progress Administration, at least 90 percent of the persons employed on any project shall have been taken from the public relief rolls:

Provided, however, that, expressly subject to the requirement of subdivision (b), the supervisory, administrative, and highly skilled workers on the project, as defined in the specifications, need not be so referred by the United States Employment Service.

2. *Qualifications for Employment.* (a) No persons currently serving sentence to a penal or correctional institution shall be employed on the project.

(b) No person under the age of sixteen (16) years, and no one whose age or physical condition is such as to make his employment dangerous to his health or safety, or the health and safety of others, may be employed on the project. This paragraph shall not be construed to operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

(c) Except as specifically provided above, workers who are qualified by training and experience and certified for work on the project by the United States Employment Service shall not be discriminated against on any grounds whatsoever. The contractor may dismiss any employee not qualified to perform the work for which he has been referred, subject to disapproval by the Owner.

(d) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

3. *Hours of Work.* (a) Except in case of emer-

165 gency:

(1) The maximum hours of work for manual labor shall be 8 hours per day and 130 hours per month. On projects located at points so remote and inaccessible that camps or floating plants are necessary, the maximum hours of work for manual labor shall be 8 hours per day and 40 hours per week.

(2) The maximum hours of work for cooks, camp assistants, and clerical and other nonmanual employees such as watchmen, policemen, and messengers, shall be 8 hours per day and 40 hours per week.

(3) Administrative and supervisory employees, including executive employees, timekeepers, and storekeepers, who perform in a work-week not more than 15 hours of manual labor (or, in case the project is being constructed on a 40-hour week basis, not more than 20 hours) shall not be subject to any limitation of hours of work.

(4) Wherever practicable, the contractor shall perform the work in at least double shifts of labor, unless otherwise provided in this contract. The contractor shall not knowingly employ under this contract any person engaged in any other gainful occupation whose weekly hours of labor on such occupation, together with his hours of labor on the project, exceed the limitations of hours prescribed for employees of his classification under this contract.

(b) Nothing in these regulations is intended to authorize hours or days of work in excess of the limitations of any applicable law or regulation.

4. *Wages and Pay Rolls.* (a) There shall be paid each employee engaged in the trade or occupation listed below not less than the hourly wage rate set opposite the same, namely:

Trade or Occupation	Hourly Wage Rate
.....	.....
.....	.....
(Insert Wage Schedule Here)	
.....	.....
.....	.....

166 If after the award of this contract it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than

such hourly rate of wage, fairly comparable to the above rates and such minimum wage rate shall be retroactive to the time of the initial employment of such person in such trade or occupation.

(b) Unless otherwise provided by law, claims or disputes pertaining to the classification of labor under this contract shall be decided by the Owner whose decision shall be binding on all parties concerned.

(c) All employees shall be paid in full, at least once each week within 3 days after the close of the pay roll period, in lawful money of the United States: Provided, however, that this paragraph shall not be construed to prohibit deductions required by law and collection of obligations by legal process.

(d) A clearly legible statement of the minimum wage rate to be paid each trade and occupation employed under this contract and of the authorized deductions therefrom, if any, shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(e) The contractor and each subcontractor shall perpare the pay rolls upon forms to be prescribed and in accordance with instructions to be furnished by t' Works Progress Administration. Not later than the day following the payment of the wages a certified legible copy of each pay roll, whether paid by the contractor or any subcontractor, shall be transmitted by the contractor to such office as may be designated by the Works Progress Administration. The contractor and each subcontractor shall submit reports at such times and on such forms as may be required by the Works Progress Administration, covering purchases of, and requisitions for, materials, together with such other information as may be required to determine the progress and status of the completion of the work on the project. Such pay rolls shall be sworn to in accordance with the "Regulations Issued Pursuant to So-called Kick-back Statute", issued jointly by the Secretary of the Treasury and the Secretary of the Interior on January 12, 1935, a copy of which is herein elsewhere set forth.

5. *Accident Prevention.* Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment

and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable law or regulation.

6. *Insurance.* The contractor shall not commence
167 work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

(a) *Compensation Insurance.* The contractor shall take out and maintain during the life of this contract adequate Workmen's Compensation Insurance for all his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for the latter's employees, unless such employees are covered by the protection afforded by the contractor. In case any class of employees engaged in hazardous work under the contract at the site of the project is not protected under the Workmen's Compensation statute, or in case there is no applicable Workmen's Compensation statute, the contractor shall provide, and shall cause each subcontractor to provide, ... for the protection of his employees not otherwise protected.

(b) *Public Liability and Property Damage Insurance.* The contractor shall take out and maintain during the life of this contract such Public Liability and Property Damage insurance as shall protect him and any subcontractor performing work covered by this contract, from claims for damages for personal injury, including wrongful death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The amounts of such insurance shall be as follows:

Public Liability Insurance in an amount not less than $ for injuries, including wrongful death, to any one person, and, subject to the same limit for each person, in an amount not less than $, on account of one

accident, and Property Damage Insurance in an amount not less than $

Provided, however, that the Owner may accept insurance covering a subcontractor in character and amounts less than the standard requirements set forth under this subparagraph (b) where such standard requirements appear excessive because of the character or extent of the work to be performed by such subcontractor.

(c) The following special hazards shall be covered by rider or riders to the policy or policies required under subparagraph (b) hereof or by separate policies of insurance in amounts as follows:

.....

.....

168 7. *Materials.* (a) *Domestic.* Unless contrary to law, in the performance of this contract the contractor, subcontractors, materialmen, or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, except, unless otherwise required by law, foreign materials, articles, or supplies may be purchased if the foreign materials, articles, or supplies are lower in cost after the following differentials are applied in favor of domestic articles, materials, or supplies:

On purchases where the foreign bid is $100 or less, a differential of 100 per cent will apply;

On purchases where the foreign bid exceeds $100, but is less than $10,000, a differential of 25 per cent will apply;

On purchases where the foreign bid is $10,000 or more, a differential of 15 per cent will apply.

(b) *Convict Made.* No materials manufactured or produced in a penal or correctional institution shall be used on or incorporated in the project, unless required by law.

8. *Inspection.* The owner reserves the right to permit such inspectors and inspection as it sees fit and hereby requires that such inspectors shall have the right to inspect

all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. The contractor shall submit to the Owner, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Owner, through his authorized agents, may require.

9. *Department of Labor Reports.* The contractor and each subcontractor shall report to the United States Department of Labor monthly, within five days after the close of each calendar month upon forms to be prescribed, and in accordance with instructions to be furnished, by the United States Department of Labor, covering the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls and the man-hours worked, and an itemized statement of the total expenditures for materials. The contractor shall also furnish to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

10. *Payments.* (a) The contractor shall provide
169 all labor, services, materials, and equipment necessary to perform and complete the work under this contract. Except as otherwise approved by the Owner, the contractor (1) shall pay for in full all transportation and utility services on or before the 20th day of the month following the calendar month in which such services are rendered, and (2) shall pay for all materials, tools, and other expendible equipment, to the extent of 90 per cent of the cost thereof, on or before the 20th day of the month following the calendar month in which such materials, tools, and equipment are delivered to the Project, and the balance of the cost within 30 days after completion of that part of the work in or on which such materials, tools, and other equipment are incorporated or used.

(b) In the absence of other provisions in this contract more favorable to the subcontractor, the contractor shall pay each subcontractor, within five days after each payment made to the contractor, the amount allowed the contractor for and on account of the work performed by the

subcontractor, to the extent of the subcontractor's interest therein.

(c) Within the first 15 days of each calendar month the Owner will make partial payment to the contractor for work performed during the preceding calendar month on estimate certified by the contractor, the Owner, and the Government Inspector. Except as otherwise provided by law, 10 per cent of each approved estimate shall be retained by the Owner until final completion and acceptance of all work covered by this contract, provided that at any time after 50 per cent of the work covered by this contract has been completed, if progress satisfactory to the Owner and the Government Inspector is being made in accordance with the terms of this contract, subsequent approved estimates will be paid in full unless otherwise provided in this contract.

(d) Compliance with the provisions of subparagraphs (a) and (b) of this paragraph is a condition precedent to partial payment under subparagraph (c) hereof.

11. *Wage Claims and Adjustments.* In cases of underpayment of wages, the Owner will withhold from the contractor out of payments due an amount sufficient to pay persons employed on the work covered by this contract the difference between the wages required to be paid under this contract and the wages actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Owner, for and on account of the contractor, to the respective employees to whom they are due.

12. *Signs.* The contractor shall furnish signs bear-
170 ing the legend:

"Federal Works Project No. ....
Public Works Administration"

as required in the specifications and shall erect the same at such locations as may be designated by the Owner.

13. *Subcontracts.* (a) The contractor shall perform, directly and without subcontracting, not less than 25 per cent of the construction, to be calculated on the basis of the total contract price. No part of this contract shall be sublet without the approval of the Owner.

(b) If the contractor shall sublet any part of this contract, the contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor and of the persons either directly or indirectly employed by his subcontractor, as he is for the acts and omissions of persons directly employed by himself.

(c) Paragraphs 1 to 5 inclusive, 7 to 10 inclusive, 11 (a) and (b), 17, 18, 19, the Regulations Issued Pursuant to So-called "Kick Back Statute" and the penalty clauses set forth in Section 9 of the Act and Section 35 of the Criminal Code, as amended, shall be inserted verbatim in all construction subcontracts under this contract.

14. *Assigment of Contract.* The contractor shall not assign this contract or any part hereof without the approval of the Owner, nor without the consent of surety unless the surety has waived its right to notice of assignment.

15. *Termination for Breach.* In the event that any of the provisions of this contract are violated by the contractor or by any of his subcontractors, the Owner may service written notice upon the contractor and the surety of its intention to terminate such contract, such notices to contain the reasons for such intention to terminate the contract, and, unless within 10 days after the serving of such notice upon the contractor such violation shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the contract, provided however, that if the surety does not commence performance thereof within 30 days from the date of the mailing to such surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract for the account and at the expense of the contractor, and the contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in
171 such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

16. *Priority of Construction Regulations.* Any provisions of this contract in conflict or inconsistent with the requirements of Exhibit "A", except such provisions as are required by applicable law or regulation, shall be void to the extent of such conflict or inconsistency.

17. *Definitions.* The following terms as used in this contract are respectively defined as follows:

"Act": The Emergency Relief Appropriation Act of 1935.

"P. W. A." or "Public Works Administration": The Federal Emergency Administration of Public Works.

"Administrator": The Federal Emergency Administrator of Public Works.

"State Director": State Director (P. W. A.), his duly authorized representative or any person designated by the Administrator to perform his duties or functions.

"Owner": The public body, agency or instrumentality which is a party hereto and for which this contract is to be performed.

"Emergency": A temporary unforeseen occurrence or combination of circumstances which endangers life or property and calls for immediate action or remedy.

"Material": Materials incorporated in the project, or used or consumed in the performance of the work.

"Subcontractor": A person, firm, or corporation supplying labor and materials or labor for work at the site of the project.

"Work at Site of Project": Work to be performed, including work normally done, on the location of the project.

18. *Paragraphs 1, 2(a), (b) and (c), 3(a) (1) and (2), 4(e), 8(a) and 10 incorporate rules and regulations issued by the President under the authority of section 6 of the Act. Any willful violation of any such rule or regulation is punishable by fine of not to exceed $1,000.*

172 *Regulations Issued Pursuant to So-Called "Kick-Back Statute"*

Pursuant to the provisions of Public Act No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior hereby jointly promulgate the following regulations:

Section 1. Said Act reads as follows:

To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

Sec. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

Section 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

State of .....

County of ....., ss:

I, ... (name the party signing affidavit) ..... (Title), do hereby certify that I am (the employee of) ..... (name of contractor or subcontractor) who supervises the payment of the employees of said contractor (subcontractor); that the
173 attached pay roll is a true and accurate report of the full weekly wages due and paid to each person em-

ployed by the said contractor (subcontractor) for the construction of ..... (project), for the weekly pay roll period from the ..... day of ....., 193 , to the ..... day of ....., 193 ; that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

Sworn to before me this .... day of ....., 193 .

Section 3. Said affidavit shall be executed and sworn to by the officer of employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within three days after the payment of the pay roll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such three-day period to the Federal agency having control of the project.

Section 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its officer or employee who supervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed

by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

Section 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

Section 6. These regulations shall became effective on January 15, 1935. 174

The clause in the pay-roll affidavit which reads " * * * that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor * * * " is construed by the Public Works Administration to mean:

(a) Wages due are the wages earned during the pay period by each person employed by the contractor, less any deductions required by law.

(b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.

(c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause " * * * that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made" does not apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.

The "Regulations Issued Pursuant to So-Called Kickback Statute" shall not be construed to prohibit deductions required by law or deductions for health, sickness, unemployment, or other similar benefits voluntarily authorized by permanent employees of equipment suppliers engaged in installation of the equipment at the site of the project.

Penalty

Section 9 of the Emergency Relief Appropriation Act of 1935, reads as follows:

"Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of this joint resolution, or diverts, or attempts to divert, or assists in diverting for the

benefit of any person or persons not entitled thereto, any moneys appropriated by this joint resolution, or any services or real or personal property acquired thereunder, or who knowingly, by means of any fraud, force, threat, intimidation, or boycott, deprives any person of any of the benefits to which he may be entitled under the provisions of this joint resolution, or attempts so to do, or assists in so doing, shall be deemed guilty of a misdemeanor and shall be fined not more than $2,000 or imprisoned not more than 1 year, or both".

Section 35 of the Criminal Code, as amended, pro-
175 vides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements * * * or use or cause to be made or used any false * * * account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * * " relating to any matter within the jurisdiction of any governmental department or agency.

176 *Order Consolidating Causes*

Filed March 31 1936

In the Supreme Court of the District of Columbia
Holding an Equity Court

Equity No. 58810.

OKLAHOMA UTILITIES COMPANY

v.

HAROLD L. ICKES, ADMINISTRATOR ETC., ET AL.

Equity No. 58927.

TEXAS UTILITIES COMPANY

v.

HAROLD L. ICKES, ADMINISTRATOR ETC., ET AL.

Equity Nos. 59071 and 59671.

ALABAMA POWER COMPANY

v.

HAROLD L. ICKES, ADMINISTRATOR ETC., ET AL.

Equity No. 60245.

IOWA CITY LIGHT AND POWER COMPANY

v.

HAROLD L. ICKES, ADMINISTRATOR ETC., ET AL.

Upon consideration of the motion of the plaintiffs filed in the above entitled causes, it is by the Court this 31st day of March, 1936,

ADJUDGED, ORDERED AND DECREED, That said causes be and the same are hereby consolidated for trial.

PEYTON GORDON
Justice.

No objection.

ALEXANDER HOLTZOFF
Special Assistant to the Attorney General.

177 *Amendment and Supplement to Bill of Complaint.*

Filed April 23 1936

* * * * * * * *

Comes now the plaintiff, Iowa City Light and Power Company, a corporation, and by leave of Court first duly had and obtained, amends and supplements its bill of complaint herein by adding thereto the following:

1—Plaintiff is informed, believes and therefore avers and offers to prove that commencing in 1933 the President of the United States announced and undertook the execution of a permanent "National Power Policy" to make electricity "more broadly available at cheaper rates to industrial, to domestic and to agricultural consumers", to effectuate regulation of rates for the intrastate generation, distribution and sale of electricity, to establish Federal regulation and control of matters of policy and service in connection with intrastate electric utilities and to promote and bring about public ownership or co-operative ownership of facilities for the generation, transmission and distribution of electricity in intrastate commerce.

In furtherance of said "National Power Policy" the Federal Government has established great Federally owned

power projects as "yard sticks" by which to measure cost of electricity, and to regulate intrastate rates and charges for electricity and has established or utilized various
178 additional agencies such as PWA, TVA and the Rural Electrification Administration. Such agencies have been and are actually engaged in carrying out various phases of said "National Power Policy". The campaign described in plaintiff's original bill of complaint herein is in furtherance, and is part and parcel, of said "National Power Policy".

2—Plaintiff is reliably informed, believes and therefore avers and offers to prove at the trial hereof that since the filing of the original bill of complaint herein the defendant Ickes as Federal Emergency Administrator of Public Works, acting by and through his assistant, the defendant Horatio B. Hackett, in purported compliance with the terms of the Federal Emergency Relief Appropriation Act of 1935, made an offer to grant to the City of Iowa City the sum of $413,000.00, under a written offer, copy of which is annexed to the answer of defendants as Exhibit "A" thereto, and is by reference made a part hereof as though set out at length herein. The City Council of Iowa City attempted to accept said offer on the 6th day of March, 1936, purporting to act on behalf of said City pursuant to the election referred to in paragraph XIIb of the bill of complaint herein, and is now proceeding to qualify for the grant as set out in said Exhibit "A". Plaintiff avers that unless restrained said new arrangement will be carried out according to its terms.

3—Plaintiff avers that the offer and purported acceptance above set forth are in furtherance of, and a part of, the illegal plan of defendants as set out more particularly in the original bill of complaint and herein. Said attempts to further said plan are illegal and will result in irreparable damage and injury to the plaintiff in the same manner and for the same reasons as alleged in the original bill of complaint with respect to the agreements then existing between said defendants and said City; and the allegations made in the original bill of complaint with respect to the arrangements then existing apply equally to the offer and
179 acceptance set out herein. Plaintiff therefore prays that the allegations of the original bill of complaint

with respect to said matters be read and considered as part hereof as though expressly repeated herein with respect to said last mentioned offer and purported acceptance.

WHEREFORE, plaintiff further prays that it be granted the same relief with respect to the offer and purported acceptance set out herein as is prayed in its original bill of complaint with respect to the matters therein recited.

IOWA CITY LIGHT AND POWER COMPANY,

By C D WATERMAN
Attorney.

CHARLES D. WATERMAN

WAYNE G. COOK
Davenport, Iowa

CHARLES M. DUTCHER
Iowa City, Iowa

THOMAS K. HUMPHREY
Chicago, Illinois

JOHN S. BROOKES, JR.

WALTER B GUY
917-15th St., N. W.,
Edmonds Building,
Washington, D. C.
Attorneys for Plaintiff.

180 DISTRICT OF COLUMBIA, *ss:*—

C. D. Waterman being duly sworn deposes and says that he is Attorney for Iowa City Light and Power Company, a Corporation organized under the laws of the State of Delaware, the plaintiff named in the above entitled cause; that he has authority to make this affidavit in behalf of said Corporation; that he has read the foregoing supplement to original bill of complaint by him subscribed and knows the contents thereof, and that the statements therein made are true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he verily believes the statements to be true; and he makes this affidavit on behalf of

said Corporation because no officer thereof is in the District of Columbia.

C. D. WATERMAN

Subscribed and sworn to before me this 21st day of April A. D., 1936.

ELSIE O. OLIVER
Notary Public,
District of Columbia.

(Seal)

Leave to file granted

ALFRED A. WHEAT—
Chief Justice

181 *Memorandum.*

Filed June 5 1936

* * * * * * * *

The plaintiffs in these five suits are public utility corporations owning or operating electric plants in their respective communities, and at the present time they have the field exclusively to themselves. The defendant, Ickes, is the Administrator of the Federal Administration of Public Works, and the other defendants are officers of the United States.

The object of the suits is to enjoin the defendants from furnishing money to the respective communities for the purpose of enabling them to construct municipal electric plants which, if constructed, will come into direct competition with those of the plaintiffs. In some cases, the plaintiffs are operating under franchises which have some years to run. In some cases the franchises have expired and the companies are operating by consent or acquiescence of the local authorities. No serious claim is made that there is any
182 difference in the status of these companies so far as their right to sue is concerned. In no case does the plaintiff have an exclusive franchise. In each case it is subject to regulation by the appropriate local authority. In each case the plaintiff has a substantial investment in its plant and is furnishing satisfactory service and if subject to the competition which will result from a municipally-owned plant it will, beyond question, suffer serious damage and in some cases its business will be destroyed. It

was frankly conceded by counsel for the plaintiffs that the municipalities have the legal power and right, if they proceed lawfully, to build competing municipal plants and that prior to the enactment of the statutes involved they had a desire to build such plants.

While the cases involve some differences of detail, both sides seem to agree that but three questions are involved in each. These questions are:

First: Have the plaintiffs a right to sue?

Second: Are the statutes involved constitutional?

Third: If constitutional, are the acts contemplated by the defendants authorized by the statute?

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(1) Have the plaintiffs a right to sue?

It is urged that plaintiffs have no standing to bring these actions as no legal or equitable right of theirs will be infringed by the making of the loans; that the injuries which they will suffer will result, not from the making of the loans, but from the competition which will come when the municipal plants begin to operate, and inasmuch as the plaintiffs have no exclusive franchises, and as the
183 municipalities may lawfully build competing plants, the plaintiffs are in no position to complain because they are acquiring the funds wherewith to finance them in an unlawful manner. Such was the view taken by the United States Circuit Court of Appeals for the Fourth Circuit in *Greenwood County v. Duke Power Company,* 81 Fed. (2nd) 986, and there is much authority to support it. It seems to me, however, that such a position is rather too narrow; that the furnishing of the funds by the Government and the resulting competition are so closely connected that, if the statute under which the funds are supplied is unconstitutional, or if the officer furnishing the funds is not authorized to do so, then the plaintiffs may test those questions on the merits.

There is a difference sometimes overlooked between the right to be heard and the right after hearing to prevail. My conclusion is that the plaintiffs have a standing as litigants which requires the Court to hear their claims and

decide them on the merits. This seems to me to be consistent with what was held in *Frost* v. *Corporation Commission of Oklahoma*, 278 U. S. 515.

(2) Are the statutes involved constitutional?

There are two statutes to be considered: The National Industrial Recovery Act, of June 16, 1933 (Title II, 48 Stat. 200), and the Emergency Relief Appropriation Act of April 8, 1935 (H.J. Res. 117).

The National Industrial Recovery Act contains the following provisions:

Section 202 provides (48 Stat. 201):

"The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control * * *; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under sub-section (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; * * *."

184

Section 203 provides:

"(a) With a view to increasing employment quickly (while reasonably securing any loans made by the United

States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase * * *; Provided, that in deciding to extend any aid or grant hereunder to any state, county, or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several states, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands."

The Emergency Relief Appropriation Act of 1935 provides:

"That in order to provide relief, work relief and to increase employment by providing for useful projects, there is hereby appropriated"

to be available for the following classes of projects:

"(a) Highways, roads, streets, and grade-crossing
185 elimination, $800,000,000; (b) rural rehabilitation and relief in stricken agricultural areas, and water conservation, trans-mountain water diversion and irrigation and reclamation, $500,000,000; (c) rural electrification, $100,000,000; (d) housing, $450,000,000; (e) assistance for educational, professional and clerical persons, $300,000,000; (f) Civilian Conservation Corps, $600,000,000; (g) loans or grants, or both, for projects of States, Territories,

Possessions, including subdivisions and agencies thereof, municipalities, and the District of Columbia, and self-liquidating projects of public bodies thereof, where in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project, $900,000,000; (h) sanitation, prevention of soil erosion, prevention of stream pollution, sea coast erosion, reforestation, forestation, flood control, rivers and harbors and miscellaneous projects, $350,000,000; *Provided further*, That not to exceed 20 per centum of the amount herein appropriated may be used by the President to increase any one or more of the foregoing limitations if he finds it necessary to do so in order to effectuate the purpose of this joint resolution:" (49 Stat. 115, 6 unbound).

The contracts involved in these cases were made in December, 1935, from funds allotted under the Act of 1933, which had then expired, except as it had been continued by the Act of 1935. Section 12 of the latter Act provided:

"SEC. 12. The Federal Emergency Administration of Public Works established under title II of the National Industrial Recovery Act is hereby continued until June 30, 1937, and is authorized to perform such of its functions under said Act and such functions under this joint resolution as may be authorized by the President. All sums appropriated to carry out the purpose of said Act shall be available until June 30, 1937. The President is authorized to sell any securities acquired under said Act or under this joint resolution and all moneys realized from such sales shall be available to the President, in addition to the sums heretofore appropriated under this joint resolution, for the making of further loans under said Act or under this joint resolution."

(49 Stat. 119, unbound).

One of counsel for the plaintiffs, in his closing argument, said:

"There are two ways of construing this later act. You can say that after NIRA expires, all action is taken under a later act; or you can say that action is taken on the earlier act as extended by the President. It does not make the slightest difference at all, because, in either case, it rested

entirely in the hands of the President as to what he should continue from NIRA, and what he should not continue." (Transcript of Proceedings, Vol. 14, pp. 1777, 1778).

While both Acts have been referred to in the ar-
186 guments, the provisions of the Act of 1933 seem to me to be the ones with which we are principally concerned, although I do not think the question is of much importance.

If the projects herein involved be deemed authorized by the Act of 1933, the authority must be found under Section 202 as part of the Public Works Program described in subdivision (a):

"(a) Construction * * * of publicly owned instrumentalities and facilities"

for which under Section 203

"With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered * * * (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to states, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; * * *."

Under the Act of 1935, we have an appropriation available for

"(g) loans or grants, or both, for projects of States, Territories, Possessions, including subdivisions and agencies thereof, municipalities, and the District of Columbia, and self liquidating projects of public bodies thereof, where in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project, $900,000,000; * * *".

The constitutionality of the provisions of the Act of 1933 was sustained by the United States Circuit Court of Appeals for the Fourth Circuit in the case of *Greenwood County* v. *Duke Power Company*, decided February 22, 1936, supra, which was a suit brought by the Duke Power Company to enjoin the South Carolina County of Green-

wood from constructing an electric power plant on the Saluda River and from obtaining a loan and grant from the Federal Public Works Administration for the purpose of constructing it.

The Act was also sustained by the Circuit Court
187 of Appeals for the Tenth Circuit in *Kansas Gas & Electric Co.* v. *City of Independence* (79 Fed. (2nd) 32, 44). See also *Langer et al.* v. *United States,* (76 Fed. (2nd) 817).

The provisions of the Emergency Relief Appropriation Act of 1935, in so far as they provide for "housing" projects were held unconstitutional by our Court of Appeals in *The Township of Franklin* v. *Tugwell,* decided May 18, 1936, on the ground that they violated Section 1 of Article 1 of the Constitution as a delegation of legislative power to the President. If it could fairly be said that that case had gone so far as to hold all the provisions of the Act to be unconstitutional, I would, of course, feel bound by it, but the only class of projects considered was "housing", and counsel for the plaintiffs do not claim that it goes further. In his opinion, Mr. Justice Van Orsdel said:

"In what we have said we do not lose sight of our duty to construe the Act so as to avoid, if fairly possible, the conclusion that it is unconstitutional. In an effort to carry out this judicial obligation, we have endeavored to find in the Act language which would enable us to say that Congress had declared a legislative policy with relation to 'housing' with sufficient definiteness to avoid the charge of an unconstitutional delegation of legislative power. But, as we have pointed out, this is not to be found. We are not here confronted with an appropriation for internal improvements of a national character or importance, or for the erection of public buildings, or the grant of loans to a state or municipality to carry out public works projects. As th these we might find in the nature of the objective a well-beaten path by which to supply the omitted means to that end. But here we have neither path nor program."

We have in the present cases grants or loans to municipalities to carry out public works projects, as to which it is easy to find the "well-beaten path".

It has not been argued that the relief of unemployment is an unconstitutional use of funds of the United States.

The constitutionality of the statutes was attacked on two grounds:

First: That there was an invasion of the reserved
188 powers of the States in violation of the 10th Amendment, and

Second: That there was a delegation of legislative power to the President in violation of Section 1 of Article I of the Constitution.

Both these grounds were considered in *Greenwood County* v. *Duke Power Company,* supra, and held to be without merit. After pointing out that the statute contemplated not the construction of isolated projects but of a "vast program of public works" intended to relieve unemployment and that such expenditures are justifiable and for the general welfare, the Court said at p. 994:

"And we do not think that it can be said that Congress is invading the reserved powers of the states, or is making expenditures for matters essentially local in character, merely because the project for which expenditure is made is not connected with interstate commerce and, when considered alone, is local in character. It cannot be said to invade the reserved powers of a state to make loans or grants of money to municipal corporations which the state continues to control, and which are at liberty to reject the loans and grants if they see fit to do so. And a program of works for relieving nationwide unemployment does not lose its national character and become local merely because each of the public works projects is constructed in some particular locality."

That the program is nationwide appears from the testimony of Administrator Ickes, who said that it extended to every county of the United States, except 3, and that there were 260 electric power projects though but 85 of them were in places where there were privately-owned facilities. In the present cases, the Federal Government retains no regulatory power over the operation of the projects for which it makes loans. I am unable to see how any reserved power of a State is infringed.

On the question of an unconstitutional delegation of legislative power, the Court said, p. 994:

"Nor do we think that the pertinent portion of
189 the Act can be condemned as an unconstitutional del-

egation of legislative power within the rule laid down in *Panama Refining Co.* v. *Ryan* 293 U. S. 388; and *L. A. Schechter Poultry Corporation* v. *United States* 295 U. S. 495. It was out of the question for Congress to prescribe the details of an extended program of public works. It appropriated the money for the purpose, laid down the principles which were to guide the President and the Administrator of Public Works in its expenditure, and left to them the working out of the details. The making of loans and grants in carrying out the policy thus laid down by Congress is the exercise of administrative, not legislative, decision. As said in *Wilmington & Zanesville Railroad Co.* v. *Commissioner* 1 Ohio St. 77, 88 and quoted with approval by the Supreme Court in *Hampton & Co.* v. *United States,* 276 U. S. 394, 407: 'The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' ''

The Court also points out that the question was fully considered by the Circuit Court of Appeals of the Tenth Circuit in *Kansas Gas & Electric Co.* v. *City of Independence,* supra, and expresses itself as in accord with what was said by Judge Phillips in that case.

I think the reasoning of the Court in these cases is sound. The statutory provisions are in my opinion valid.

(3) Are the acts contemplated by the defendants authorized by the statute?

The action contemplated by the defendants is attacked as being beyond the authority conferred by the statute on various grounds, which seem to me to be without merit. Some of them were considered at length in *Greenwood County* v. *Duke Power Co.,* supra.

One ground of attack is that the Administrator did not at the start prepare "a comprehensive program". It is undoubtedly true that in a literal sense no definite program was at first formulated. The program was worked out slowly and progressively and considerable time was occupied in effecting an organization and in the examination of many proposed projects. The defendant, Ickes, in re-

190 sponse to a question asking his administrative interpretation of the provisions of the statute relating to a comprehensive program of public works, answered:

"We had two duties to perform, as I saw it. One was to prepare a comprehensive program of public works. The other was to get men in as large numbers as possible to work as quickly as possible. In any conflict between the two, we felt that the latter took precedence.

"We soon realized that to prepare a comprehensive program of public works would require months—perhaps a year or two—and that if we literally set about the preparation of a comprehensive program of public works, the very purpose of the Act itself would be defeated. So, we satisfied ourselves by developing the program of desirable public works as we progressed. We did not treat it academically at all, but practically." (Transcript of Proceedings, Vol. 12, p. 1468).

This I think was a reasonable, practical and substantial compliance with the statute. It appears from the evidence that on March 20, 1934, pursuant to a Resolution (Sen. Res. 190, 73rd Cong.) calling upon the Administrator to furnish the Senate with information, including a general survey of the public works program and an account of the organization of the Public Works Administration and a statement of its policies, the Administrator submitted a report to Congress a document of some 300 pages in length, giving the information called for by the Resolution. Thereafter Congress passed the Emergency Relief Act of 1935, with full information in regard to what had been done and what was being done under the Act of 1933. It seems to me that this must be regarded as Congressional approval of the Administrator's program.

It has been argued that some of the projects are not useful or are not self-liquidating, or are not primarily for the relief of unemployment. I feel, however, that the determination of such matters is within the discretion of the President, or the Administrator acting under him. Beyond all question, the Act confers upon these Executive

191 Officers a very wide discretion, and I believe that their decisions upon such matters of detail are not subject to judicial review.

My conclusion upon the whole case is that the bills should be dismissed upon the merits.

ALFRED A. WHEAT—
Chief Justice

June 5, 1936.

192 *Defendants' Proposed Findings of Fact and Conclusions of Law*

Filed June 26 1936

* * * * * * * * * * *

In the above-entitled cause heard before the undersigned, the Chief Justice of this Court sitting in Equity Division No. 3, the Court, from the pleadings and exhibits filed and from the hearings had and the evidence taken before it, makes the following findings of fact and reaches the following conclusions of law:

193 *Findings of Fact*

DESCRIPTION OF PARTIES.

1.

The plaintiff Oklahoma Utilities Company is a corporation organized and existing under the laws of the State of Oklahoma, with one of its places of business in the City of Hominy, Osage County, Oklahoma. It is engaged in the business, among other things, of purchasing, transmitting, selling and distributing electricity in several communities in the State of Oklahoma and, in particular, has been and now is engaged in such business in the City of Hominy, State of Oklahoma. This plaintiff is the only agency existing in the City of Hominy for the distribution and sale therein of electricity.

2.

The plaintiff Texas Utilities Company is a corporation organized and existing under the laws of the State of Texas, and has its principal office in the City of Plainview, Hale County, Texas. This plaintiff is engaged in the business of generating and distributing electricity in the State of Texas. It is the only agency now existing for the sale and distribution of electrical energy in the said City.

3.

The plaintiff Alabama Power Company is a corporation organized and existing under the laws of the State of Alabama, and has its principal office in the City of Attalla, Alabama. The Alabama Power Company owns and operates a generating, transmission and distribution system in the State of Alabama, and distributes electrical
194 energy to numerous communities in that State, including the Cities of Florence, Decatur, Sheffield, Tuscambia, Hartzelle, Russellville, and Guntersville. This plaintiff is the only agency now engaged in supplying electric light and power to the said cities, except for the City of Sheffield, which is now engaged in the distribution and sale of electrical energy on a limited scale.

The Alabama Power Company owns and operates hydroelectric plants as follows: Lock 12 (known as Lay Dam) on the Coosa River in Alabama, the construction of which was permitted by an Act of Congress approved March 4, 1907 (34 Stat. 1888); Mitchell Dam and Jordan Dam, likewise on the Coosa River, Alabama; and Martin Dam on the Tallapoosa River, Alabama, which latter three dams were constructed under licenses granted by the Federal Power Commission.

4.

The plaintiff Iowa City Light & Power Company is a corporation organized and existing under the laws of the State of Delaware, is qualified to do business in the State of Iowa as a foreign corporation, and has its principal office in said State, in the City of Iowa City, Iowa. This plaintiff is engaged in the generation of gas and electrical energy and in the transmission, distribution and sale thereof in the City of Iowa City, and in the incorporated towns of Coralville and University Heights, Johnson County, Iowa. This plaintiff is the only agency now selling and distributing electrical energy in the said towns.

195 5.

The defendant Harold L. Ickes (hereinafter sometimes called the "Administrator") is the duly qualified and acting Administrator of the Federal Emergency Administration of Public Works (hereinafter called "PWA") appointed by Executive Order of the President of the United

States of America, dated July 8, 1933, in pursuance of the provisions of Section 201 (a) of Title II of "The National Industrial Recovery Act," approved June 16, 1933.

6.

The defendant Horatio B. Hackett is the duly appointed, qualified and acting Assistant Administrator of PWA.

7.

The defendant John J. Madigan is a duly appointed, qualified and acting Executive Officer of PWA.

8.

The defendant F. E. Schnepfe is the duly appointed, qualified and acting director of the Projects Division of PWA.

9.

The defendant Harry L. Hopkins is the duly appointed, qualified and acting Administrator of the Works Progress Administration, and was appointed such by an Executive Order of the President of the United States (No. 7034), dated May 18, 1935.

10.

The defendant Henry Morgenthau, Jr. is the duly appointed, qualified and acting Secretary of the Treasury of the United States and, as such, has general supervision and control over the disbursement of public funds of the United States.

196

11.

The defendant W. A. Julian is the duly appointed, qualified and acting Treasurer of the United States and, as such, is in control of the payment of checks drawn upon him by disbursing officers of the United States.

12.

The defendant Guy F. Allen is the duly appointed, qualified and acting Chief Disbursing Officer, Division of Disbursement, Treasury Department of the United States and, as such officer, is in control of drawing and issuing checks on behalf of the United States, and the disbursement of the public funds of the United States.

THE FRANCHISES OF THE PLAINTIFFS.

13.

The ultimate predecessor of the plaintiff Oklahoma Utilities Company was granted a non-exclusive franchise by the City of Hominy on March 12, 1914, to engage in the electrical business in the said City for twenty years. The franchise was assigned to this plaintiff's immediate predecessor on May 1, 1926. The franchise expired on March 12, 1934, and has not been renewed or extended. This immediate predecessor, a corporation, was reorganized on October 1, 1934, and the reorganized corporation is the plaintiff Oklahoma Utilities Company, which is now operating in the City of Hominy at sufferance.

197

14.

On or about the 15th day of April, 1909, the City Council of the City of Plainview, Texas, granted to the predecessor of the plaintiff Texas Utilities Company, a non-exclusive franchise to construct, operate and maintain an electric light and power plant and distribution system in the City of Plainview, Texas, for a period of fifty years. This franchise was assigned to the Texas Utilities Company on November 17, 1915.

15.

In the year 1902 the Cities of Florence, Sheffield and Tuscumbia, each granted to the predecessor in interest of the plaintiff Alabama Power Company a non-exclusive franchise to construct and operate an electric power plant. These franchises were assigned to the plaintiff Alabama Power Company in 1925. By their terms, the franchises so granted by the Cities of Sheffield and Tuscumbia expired in October, 1932, and the franchise granted by the City of Florence expired in March, 1933.

On October 16, 1919, the City of Decatur granted to the plaintiff a similar non-exclusive franchise which on January 27, 1920, became effective for a period of thirty years.

On August 10, 1915, the Town of Hartzelle granted to the plaintiff Alabama Power Company an intermediate non-exclusive franchise to construct, maintain and operate throughout said town an electric distribution system and business.

On July 5, 1915, the Town of Guntersville granted a similar non-exclusive franchise to the plaintiff Alabama Power Company.

On June 28, 1923, the Town of Russellville granted
198 a similar non-exclusive franchise to the plaintiff Alabama Power Company.

16.

In the year 1909 Iowa City, Iowa, granted to the predecessor in interest of the plaintiff Iowa City Light and Power Company a non-exclusive electric franchise for a period of twenty years. In the year 1912 this franchise was assigned to the Iowa City Light and Power Company. In the year 1932 this plaintiff made an application to the City for a renewal of its franchise. An election was held in Iowa City on October 11, 1932, at which time the question as to whether the franchise should be renewed was submitted to a popular vote. A majority of those voting voted against such renewal. The franchise thereafter expired in accordance with its terms on January 11, 1934 (Martin, 1226).

In the year 1934 the Town of Coralville, Iowa, granted to this plaintiff a non-exclusive franchise extending for the term of twenty-five years, and in the year 1935, the Town of University Heights, Iowa, granted to this plaintiff a non-exclusive franchise for a term of fifteen years.

PLAINTIFFS AS TAXPAYERS.

17.

Each of the plaintiffs annually pays substantial amounts of money in taxes to the United States, and to the States, and municipalities in which they operate.

The plaintiff Alabama Power Company paid annual license and privilege taxes on the operation of its business to the Cities of Florence, Sheffield and Tuscumbia, Alabama,
up to January 1, 1936. In January, 1936, the Cities
199 of Florence and Sheffield refused to accept any privilege and license tax for the year 1936 from the Alabama Power Company.

AUTHORITY OF CITIES TO BUILD PLANTS

19.

The Cities of Florence, Decatur, Sheffield, Tuscumbia, Hartselle, Russellville, Guntersville in the State of Ala-

bama, the City of Hominy, Oklahoma, the City of Plainview, Texas, are authorized by the laws of their respective States to construct and operate municipal electric plants and distribution systems. In the Cities of Plainview, Texas, and Decatur, Hartselle, Russellville and Guntersville, Alabama, the municipalities are authorized to engage in competition with the existing power company, and in the Cities of Hominy, Oklahoma, Iowa City, Iowa, and Florence, Sheffield and Tuscumbia, Alabama, where the franchises of the existing power company have expired, the Cities may either compete with or supplant the existing plants of the power company.

Each of the Cities involved in these suits is author-
200 ized to issue bonds for the purpose of financing the construction of their respective plants and to receive grants for that purpose.

EVENTS LEADING TO APPLICATIONS OF CITIES

20.

Florence.

In March, 1933, the City of Florence employed engineers to appraise the existing system belonging to the Alabama Power Company which was supplying it with electrical power (149). During 1933, an election was held to determine whether the City should engage in the municipal electric business. The proposition carried by a vote of 14½ to 1. On or about November 16, 1933, the City of Florence and the Alabama Power Company entered into negotiations for the purchase by the City of the plant of the company at Florence. These negotiations were terminated because of the wide divergence between the price offered by the City and the amount asked by the Power Company for its plant (151).

On December 20, 1933, the City of Florence filed an application with the Public Works Administration for a loan and grant, under Title II of the National Industrial Recovery Act, for the purpose of constructing a munici-
201 pal power plant, and sometime later an allotment for a loan and grant to the City was made by the Public Works Administration and approved by the President.

Subsequently to these proceedings, the Tennessee Valley Authority attempted to persuade the City of Florence to

enter into a plan whereby the Authority would exercise its option (later abandoned) to purchase distribution systems in Florence, Alabama, and several other communities, from the Alabama Power Company, rehabilitate them, and turn them over to the communities. This plan was inaugurated in an attempt by the Tennessee Valley Authority to prevent duplication of existing facilities of the power company and for the purposes of protecting the investment of the Alabama Power Company. The City of Florence rejected this proposal as disadvantageous to itself, and made a counter-proposal that it purchase the existing facilities of the Alabama Power Company at Florence, and use funds to be supplied by the Public Works Administration for rehabilitation and extensions. Later this plan was abandoned by the Tennessee Valley Authority. PWA refused to make a loan or grant to the City of Florence until this plan had been abandoned.

21.

On December 28, 1934, the Public Works Administration entered into a loan and grant agreement with the City of Florence, whereby the United States agreed to aid the City in financing the construction of a municipal electric distribution system. A copy of this agreement appears as Exhibit F-1; Part 2-a, of Stipulation Agreement No. 1 in the cases of Alabama Power Company v. Ickes, et al., Equity Nos. 59071 and 59671.

The said contract was terminated by mutual agreement, dated December 2, 1935, and a new loan and grant agreement, dated December 4, 1935, was entered into between the City of Florence and the Public Works Administration. A copy of this new agreement appears as Exhibit F-3 in the said Stipulation Agreement No. 1.

202 22.

Sheffield.

In June, 1933, the City of Sheffield, Alabama, held an election to determine whether the City should erect a municipal power plant (Creer-210). The result of this election was 630 in favor of the establishment of a municipal electric system, and 96 against such a system.

Thereafter, on December 20, 1933, the City of Sheffield, Alabama, filed an application with the Public Works Ad-

ministration for a loan and grant of funds for the erection of a municipal power plant. In December, 1934, a loan and grant agreement was entered into between this City and the Public Works Administration. A copy of this agreement appears as Exhibit S-1; Part 1-a, of the aforementioned Stipulation Agreement No. 1.

The said contract was terminated by mutual agreement, dated December 2, 1935, and a new loan and grant agreement, dated December 4, 1935, was entered into between the City of Sheffield, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit S-3 of the said Stipulation Agreement No. 1.

23.

Tuscumbia.

On August 30, 1933, the City of Tuscumbia, Alabama, held an election to determine whether the City should erect a municipal power plant (Farr-205). The result of this election was 336 in favor of the establishment of a municipal electric system, and 8 against such a system.

Thereafter, on December 20, 1933, the City of Tuscumbia, Alabama, filed an application with the Public Works Administration for a loan and grant of funds for the
203 erection of a municipal power plant. In December, 1934, a loan and grant agreement was entered into between this City and PWA. A copy of this agreement appears as Exhibit T-1; Part 1-a, of the aforementioned Stipulation Agreement No. 1.

The said contract was terminated by mutual agreement, dated December 2, 1935, and a new loan and grant agreement, dated December 4, 1935, was entered into between the City of Tuscumbia, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit T-3 of the said Stipulation Agreement No. 1.

24.

Decatur.

On October 1, 1933, the City of Decatur, Alabama, held an election to determine whether the City should erect a municipal power plant (Hendrix-215). The result of this election was 1415 in favor of the establishment of a municipal electric system, and 501 against such a system.

Thereafter, on December 20, 1933, the City of Decatur, Alabama, filed an application with the Public Works Administration for a loan and grant of funds for the erection of a municipal power plant. In December, 1934, a loan and grant agreement was entered into between this City and the Public Works Administration. A copy of this agreement appears as Exhibit D-1; Part 3-b, of the aforementioned Stipulation Agreement No. 1.

The said contract was terminated by mutual agreement, dated December 2, 1935, and a new loan and grant agreement, dated December 4, 1935, was entered into between the City of Decatur, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit D-3 of the said Stipulation Agreement No. 1.

204 25.

Hartselle.

Sometime in 1933, the City of Hartselle, Alabama, held an election to determine whether the City should erect a municipal power plant (Livingstone-176). The result of this election was 296 in favor of the establishment of a municipal electric system, and 18 against such a system.

Thereafter, on December 20, 1933, the City of Hartselle, Alabama, filed an application with the Public Works Administration for a loan and grant of funds for the erection of a municipal power plant, and a loan and grant agreement, dated December 4, 1935, was entered into between the City of Hartselle, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit H-1, Part 2-a, of the aforementioned Stipulation Agreement No. 1.

26.

Russellville.

In December, 1933, the City of Russellville, Alabama, held an election to determine whether the City should erect a municipal power plant (Porter-182). The result of this election was 405 in favor of the establishment of a municipal electric system, and 103 against such a system.

Thereafter, on December 20, 1933, the City of Russellville, Alabama, filed an application with the Public Works Administration for a loan and grant of funds for the erec-

tion of a municipal power plant, and a loan and grant agreement, dated December 4, 1935, was entered into between the City of Russellville, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit R-1; Part 1-a, of the aforementioned Stipulation Agreement No. 1.

205 27.

Guntersville.

On September 4, 1933, the City of Guntersville, Alabama, held an election to determine whether the City should erect a municipal power plant (Scruggs-200). The result of this election was 240 in favor of the establishment of a municipal electric system, and 70 against such a system.

Thereafter, on December 20, 1933, the City of Guntersville, Alabama, filed an application with the Public Works Administration for a loan and grant of funds for the erection of a municipal power plant and a loan and grant agreement, dated December 4, 1935, was entered into between the City of Guntersville, Alabama, and the Public Works Administration. A copy of this agreement appears as Exhibit G-1; Part 2-a, of the aforementioned Stipulation Agreement No. 1.

28.

Hominy.

Sometime in the year 1930, the Mayor and City Council of the City of Hominy, Oklahoma, became interested in the construction of a municipal electric light plant (Hall-7), and on December 16, 1930, the City held an election to determine the question of the issuance of bonds to be used for the purpose of constructing a municipal plant and distribution system. The vote was 373 in favor of the issuance of the bonds and 42 against.

The validity of the proposed bond issue was contested in the courts of Oklahoma; a contract was let for the construction of the proposed municipal plant; the performance of this contract was enjoined by the Federal Court in a suit brought by the Oklahoma Utilities Company. The City then began negotiations for the sale of its bonds to the Reconstruction Finance Corporation.

On August 24, 1933, the City filed an application
206 with PWA for a loan and grant to erect the proposed municipal power plant, and a loan and grant agreement dated January 10, 1935, was entered into between the PWA and the City of Hominy. A copy of this agreement is attached to plaintiff's Exhibit 92 and marked Exhibit C.

During the month of September, 1935, this contract was terminated and thereafter a new agreement, dated December 14, 1935, was entered into between the parties. A copy of this agreement is attached to plaintiff's Exhibit 92 and marked Exhibit F.

At the present time work is actually being carried on in the construction of the municipal power plant in Hominy without the use of Federal funds (Hall-14).

29.

Plainview.

On July 20, 1931, the Council of the City of Plainview, Texas, adopted a resolution favoring the erection of a municipal light and power plant. (Dysart-23). On November 15, 1932, the Council adopted an ordinance to the same effect and on the same date authorized the Mayor and the City Secretary to enter into a contract with Montgomery & Ward, Engineers, of Wichita Falls, Texas, for the erection of a municipal light and power plant.

On April 4, 1933, a municipal election was held to determine whether the City Council should be authorized to issue revenue bonds for the purpose of erecting a municipal power plant (Dysart-25). The result of this election was 438 in favor of the issuance of such bonds, and 100 against such issuance.

On August 17, 1935, a loan and grant agreement was entered into between the City of Plainview and the Public Works Administration. A copy of this agreement is attached to plaintiff's Exhibit 24, marked Exhibit D. This
207 contract was terminated by mutual agreement, dated December 2, 1935, and on December 4, 1935, a new loan and grant agreement was entered into between the City of Plainview and the Public Works Administration. A copy of this new agreement is attached to plaintiff's Exhibit 24, marked Exhibit F-1.

30.

Iowa City.

On April 17, 1934 an election was held in Iowa City, Iowa, on the question of the construction of a municipal electric system, and the issuance of revenue bonds therefor. The result of this election was 2959 in favor of such construction and issuance and 2804 against such construction and issuance.

On Jan. 8, 1934, Iowa City made application to PWA for a loan and grant for the construction of a municipal electric project. The project was approved by the Administration and the President and a loan and grant agreement was forwarded to the City. On October 5, 1934, the City returned the loan and grant agreement unexecuted and withdrew its application. On April 5, 1935, after a change in the City administration, (the application was reinstated.) On June 17, 1935, the application was amended so as to apply for a grant only. On January 8, 1936, pursuant to said application, PWA made an offer in writing to aid the City by way of grant in financing the construction of a municipal power plant; a copy of this offer is set forth in plaintiff's Exhibit 52. This offer was accepted by resolution of the City Council on March 6, 1936.

208

31.

PROCEDURE FOR HANDLING APPLICATIONS

Organization of PWA.

At the head of the PWA is the Administrator, whose powers are plenary and subject only to the control of the President. He has complete supervision and direction of the Public Works Administration. The Public Works Administration is composed of a number of Divisions, among which are the Legal Division, the Engineering Division, the Financial Division, and the Projects Division. The first three of the foregoing are examining divisions, and their function is to examine and make recommendations to the Administrator with respect to applications for projects. The Projects Division coordinates the reports of the examining divisions, and records and routes applications.

In addition there existed at one time in the Public Works Administration a Technical Board of Review to consider

projects against which an adverse report or protest had been lodged, and an Electric Power Board of Review established May 9, 1934 which considered adverse reports or protests with respect to electric power projects. The Electric Power Board of Review was dissolved by order of the Administrator on March 16, 1935.

The PWA has a field office in every State in the country. The chief official in each of these offices was at one time known as the State Engineer for the Public Works Administration, who usually was the Chairman of a State Advisory Board. This official is now designated as the State Director, and the State Advisory Board has been abolished.

By Executive Order of June 16, 1933, the President of the United States appointed a Special Board for Public Works,
consisting of the Secretary of the Interior as Chair-
209 man, and certain other Government officials as members. One of the functions of this Board was to pass upon all recommendations for allotments of funds appropriated pursuant to Title II of the National Industrial Recovery Act, for loans and grants for public works projects.

Applications.

Applications for loans and grants for PWA projects are governed by two separate statutes,—Title II of the National Industrial Recovery Act, and the Emergency Relief Appropriation Act of 1935, and the procedure for handling applications is slightly different under each statute.

Applications for funds appropriated by Title II of the National Industrial Recovery Act, such as are involved in the projects in the Cities of Florence, Sheffield, Tuscumbia, Decatur, Hominy and Plainview were received in the first instance at the State PWA office. Such applications were examined in such offices. The State Engineer made a report to the Public Works Administrator, recommending approval or disapproval of the application. The application and State Engineer's report were received by the Projects Division of the general office in triplicate, a copy of which was transmitted to each of the examining divisions for study and recommendation.

The recommendations of the three examining divisions were then sent to the Special Board for Public Works, which passed a resolution, recommending approval or disapproval of an allotment. If the Administrator of Public Works

agreed with the recommendation for an allotment for the project he signed the resolution in approval thereof. An allotment of funds was not intended to create, and did not create, a legal obligation to make a loan or grant. The Administrator then presented a list of projects to the President with his recommendation. The President gave a final approval or disapproval to the application by making notations on and signing the list.

Applications for funds appropriated by Emer-
210 gency Relief Appropriation Act of 1935, such as are involved in projects for the Cities of Hartselle, Russellville, Guntersville and Iowa City are handled in a slightly different manner. The applications are received in the first instance by the State Director of PWA. At the State office, representatives of the Legal, Engineering and Financial Divisions examine the application and prep[illegible] reports. The applications and the reports are forwarded in triplicate to the central office in Washington, and are there reviewed by the three examining divisions, and approval or disapproval is recommended by the Director of each examining division. If the application is approved by the Administrator and by the President of the United States the allotment is complete.

Before approving any project and before executing or authorizing the execution of a loan and grant agreement under either statute the Administrator received advice from his subordinates with respect to the facts bearing upon whether the making of the loan and grant would comply with the pertinent provisions of the statutes and Executive Orders of the President. In some instances he also relied upon data received through oral conferences, the results of which were not always reduced to writing. The Administrator submitted the approved projects to the President for his consideration and approval; in some instances the President acted on the basis of oral discussions which were not reduced to writing.

32.

Loans and grants for the financing of municipal electric projects were dealt with in the same manner and judged by the same tests as other projects.

Each of the applications submitted by the Cities herein involved were handled in accordance with the procedure outlined in Finding 31.

211

33.

Functions of PWA Subordinates Advisory

The State Engineers or Directors, the State Advisory Boards, each of the examining divisions of the PWA, the Projects Division, the Special Board for Public Works, the Technical Board of Review, and the Electric Power Board of Review, have at all times had only advisory powers with respect to the approval of applications for loans and grants. None of these agencies had any power either by original authorization or subsequent ratification to make allotments or contracts or to make commitments with respect thereto, or to do anything whatsoever except to obtain information and to make advisory reports and recommendations to the Administrator. The power of approval or disapproval rested entirely with the Administrator and the President.

34.

Cities Propose to Build Plants

With the proceeds of the sale of its bonds, and of the grant by PWA, each of the cities herein involved proposes to construct a municipal electric light plant. The result will be competition with the plants of the plaintiffs which in all probability will thereby suffer substantial financial loss.

35.

Inducement.

The determination of whether municipal competition with privately-owned utilities, or the elimination of competition by privately-owned utilities where their franchises had expired, was desirable, was made by the cities involved and not by PWA.

Each of the municipalities involved in this suit determined to enter into the electric distribution business of its own free will. There was no solicitation or coercion on the part of any of the defendants, their agents or subordinates. There was and is no conspiracy between any of the defendants and any other person, nor is there any other effort on the part of any of the defendants to,

212 nor are their actions motivated by a desire to, cause injury or financial loss to the plaintiffs, or to regu-

late their rates or electric rates generally, or to foster municipal ownership of utilities.

The expenditures under these statutes involve no purchase of, nor contract providing for, regulation by the United States. The failure of any city to apply for or receive loans or grants under those statutes will impose upon it no disadvantage or financial loss.

36.

Rates.

The defendants have not reserved any right or power to influence or control rates to be charged by the proposed municipal power plants. Provisions of earlier contracts in any way inconsistent with the facts found herein were eliminated before any action was taken pursuant thereto by any of the municipalities.

37.

Neither the United States nor any of the defendants has reserved any right or power under the existing contracts, or in any other way, to require any of the municipalities to eliminate competition or to designate the person or agency from whom the municipality must purchase its power. Provisions of earlier contracts in any way inconsistent with the facts found herein were eliminated before any action was taken pursuant thereto by any of the municipalities.

The rights of the United States with respect to the construction of the projects are fully set forth in the contracts. These contracts are subject to no terms or conditions except as specifically set forth therein.

38.

Neither the United States nor any of the defendants has any power to control the operation of the projects after construction is completed.

213 39.

Comprehensive Program

Upon his determination to approve a project, include it in the comprehensive program of public works, and make a loan and grant therefor, the Administrator submitted it to the President for his approval. When the action of the Ad-

ministrator was approved by the President, funds were allocated for the specific project. On March 20, 1934, pursuant to a Resolution (Sen. Res. 190, 73rd Cong.) calling upon the Administrator to furnish the Senate with information including "a general survey of the public works program," an account of the organization of the Public Works Administration and a statement of its policies, the Administrator submitted a report to Congress, a document some three hundred pages in length, giving the information called for by the Resolution, including a detailed list containing the name, location, and type of each approved project and the amount of funds allocated therefor.

Thereafter, on June 19, 1934, Congress enacted the Emergency Appropriation Act, Fiscal Year of 1935 (Pub. No. 412, 73rd. Cong., 2d Sess.), which, among other things authorized not exceeding $500,000,000 for public works under Title II of the National Industrial Recovery Act. On April 8, 1935, Congress enacted the Emergency Relief Appropriation Act of 1935, which, among other things, authorized the continuance of the Public Works Administration and the performance of its functions, and made available additional sums for loans and grants to States, municipalities, and other public bodies.

214 40.

Public Works Administration Program National in Scope.

A total of 7,957 projects, of many different types and extending into every county in the United States except three, have been approved by the Public Works Administration and funds allocated therefor. Of this number, 260 are electric power projects, 85 being located in places where privately-owned electric facilities are now being operated. The amount allotted for all non-Federal PWA projects is $1,222,636,961. The total allotted for the 85 competing electric projects is $58,768,800, representing 1.1% of the total number of allotments and 4.8% of the total amount of allotments.

41.

General Welfare.

Each of the projects herein involved is a part of a program of national scope, is designed to relieve unemploy-

ment, and promotes the general welfare of the United States.

42.

Loans Reasonably Secured.

No attempt was made by the plaintiffs in any case except with respect to Plainview, Texas, to prove that the loans were not reasonably secured and that the projects were not self-liquidating. In the case of Plainview, Texas, there is substantial evidence to support the determination of the Administrator that the Plainview project is self-liquidating and that the loan is reasonably secured.

As to all other projects involved in this litigation, except that in Iowa City which involved a grant only, the Administrator has made a determination that the loans are reasonably secured.

43.

Projects Approved.

Each of the projects herein involved has been approved by the Administrator and by the President of the United States.

215

44.

Work on Projects

The President of the United States has determined that in the case of the projects to be constructed in the Cities of Iowa City, Iowa, and Hartselle, Russellville, and Guntersville, Alabama, with funds appropriated under the Emergency Relief Appropriation Act of 1935, 25% of the loan or grant, or the aggregate thereof, will be expended for work on each project.

45.

The Court judicially notices that the census of 1930 indicates that in the years 1923-1925 there were approximately forty-one million people over the age of ten years gainfully employed in the United States. This number included agricultural and industrial workers. Of this group eight million were employed in industry. These are subdivided into workers in the durable and non-durable industries. The durable goods industries include firms manufacturing such products as iron and steel, machinery, transportation equip-

ment, railroad repair shops, non-ferrous metals, lumber and allied products, stone, clay and glass products. In the non-durable goods groups are textiles and their products, such as clothing, leather and its products, such as boots and shoes, food and kindred products, tobacco manufacturers, paper, printing, chemicals, and rubber products.

During the period 1923-1925 the average number of persons employed in the durable goods group and the non-durable group was approximately equal, there being over four million persons in each group.

From data computed by the Bureau of Labor Statistics of the Department of Labor, it appears that if the
216 average monthly number of persons employed during the years 1923-1925 be taken as normal and indicated by the index number 100, then both the durable goods and the non-durable goods industries stood together in August of 1929 at the figure 107. From the year 1923 to the year 1929 there was very small variation in the movement of employment in the durable and non-durable goods groups. Beginning with the latter part of 1929 employment in both groups decreased, but in the durable goods industries it decreased more rapidly than in the consumers' or non-durable goods industries.

During the first six months of the year 1933, the index of employment in the durable group varied between approximately 45 and 50, while during the same period the index of employment in the non-durable group varied between approximately 75 and 85.

46.

Pursuant to the provisions of PWA contracts, contractors engaged in furnishing materials and labor on public works projects are required to furnish reports to the Bureau of Labor Statistics giving data in regard to the number of people on the payroll, the amount of the payroll, the man-hours of work at the site of the construction project and the expenditures for construction materials. Upon the basis of information so received, a study was undertaken by the Bureau of Labor Statistics of six power projects already completed with funds furnished by the Public Works Administration. The total expenditure for labor and materials amounted to $461,628. The study shows that of this amount the labor at the site accounted for 13.2% of

the total expenditure, and materials for 86.7%. There were 85,529 man-hours created by these projects and 380,000 man-hours of indirect labor in fabricating, transporting, and producing the materials. Four and four-tenths man-hours of indirect labor were created for each man-hour of labor at the site. The conclusions of the Bureau of Labor Statistics as to indirect labor are approximations based upon carefully worked-out averages, and do not purport to be precise.

From July, 1933, until March, 1936, a total of $1,-
217 177,000,000 was advanced by the Public Works Administration for the purchase of materials for public works projects.

47.

The fundamental purpose of PWA was and is to relieve existing widespread unemployment, and to increase purchasing power through the construction of useful public works.

48.

Public Works projects are particularly adapted to relieving unemployment in the durable goods industries, by providing both direct employment, which is work at the site of the project, and indirect employment, which is work in industries supplying materials for use at the site, mining industries, and transportation facilities.

49.

50.

'The discretionary powers authorized by Section 203(d) of Title II of the National Industrial Recovery Act have never been exercised.

218 *Conclusions of Law*

1.

The applicable provisions of Title II of the National Industrial Recovery Act and of the Emergency Relief Appropriation Act of 1935 and the contracts and the loans and grants involved in these suits are valid and constitutional.

2.

The applicable provisions of Title II of the National Industrial Recovery Act and of the Emergency Relief Appropriation Act of 1935, and the contracts and the loans and grants involved in these suits involve valid expenditures for the general welfare, and involve no improper delegation of legislative power and no exercise of any improperly delegated power, and do not violate the Tenth Amendment or any other provisions of the Constitution.

3.

4.

Title II of the National Industrial Recovery Act sets forth definite standards with respect to the purposes of the expenditures by the Administrator and the means by which such expenditures should be made. These standards,
219 as administratively interpreted, were reaffirmed by the Emergency Relief Act, Fiscal Year of 1935, approved June 19, 1934, and were also reaffirmed by and incorporated in Section 12 of the Emergency Relief Appropriation Act of 1935, approved April 8, 1935.

5.

If the making of the loans and grants results in lower rates, such result is but the incidental effect of what the States and their municipalities voluntarily decide to do, and therefore cannot have the effect of making such loans and grants invalid.

6.

Under the contracts involved in these cases the United States will have no control of the rates charged by, or the operation and management of, the plants of the several cities, and no rights with respect thereto other than those which any other holder of the bonds of any such cities would have under the laws of the States in which the cities are situated. The rates charged by the several cities, and the operation and management of their plants will in all respects continue to be subject to regulation by the several States in which the several cities are situated. The United States is in no way attempting to and will in no way be able

to regulate commerce within any of the States, as a result of said contracts.

7.

The contracts and the proposed loans and grants involved in these suits are made and being made in full compliance with the applicable statutes.

8.

Title II of the National Industrial Recovery Act and the Emergency Relief Appropriation Act of 1935 authorize the making of loans and grants by PWA to municipalities for the purpose of financing the construction of municipally-owned generating plants and distribution systems, regardless of whether or not they compete with plants or distribution systems owned by privately-owned public utility companies, or will supplant the same where the franchises of such companies have expired.

9.

The provision of the Emergency Relief Appropriation Act of 1935 requiring that the President determine that, in the case of loans or grants to cities, not less than twenty-five per cent thereof would be expended for work under each particular project should be construed as referring not only to work on the site of the particular project, but also to include indirect labor resulting from the expenditures for such project.

10.

The administrative interpretation of the provisions of Title II of the National Industrial Recovery Act with reference to the preparation of a comprehensive program of public works, as set forth in Finding of Fact No. 39, and the inclusion of projects therein was a reasonable, practical and proper interpretation. Moreover, that interpretation has been adopted, ratified and approved by the Congress by the subsequent statutes above referred to.

11.

The execution and performance by the defendants of the contracts with the Cities of Florence, Sheffield, Tuscumbia, Decatur and Plainview are authorized by Title II of the

National Industrial Recovery Act as continued by Section 12 of the Emergency Relief Appropriation Act of 1935, and execution and performances by the defendants of the contracts with the Cities of Hartselle, Russellville, Guntersville and Iowa City are authorized by the Emergency Relief Appropriation Act of 1935.

221 12.

13.

The execution and performance of these contracts are in all respects lawful under the Constitution and laws of the United States, and as to the cities other than Iowa City, under the laws and constitutions of the States in which the respective cities are situated. As to Iowa City, all questions of state law set forth in the Bill of Complaint were by stipulation withdrawn from consideration in these suits.

14.

The acts of the President and the Administrator in these cases were not unreasonable and were within the range of sound discretion.

The acts of the President and the Administrator in approving and making the contracts and the loans and grants called for the exercise of administrative discretion not subject to judicial review unless arbitrary and unreasonable.

15.

Each of the cities involved herein except Iowa City has the right under the Constitution and statutes of its State to build its proposed plant, to issue the proposed bonds, and to receive the proposed grants for financing the construction of such plant.

16.

The plaintiffs have a standing as litigants in accordance with *Frost* v. *Corporation Commission*, 278 U. S. 315, which required the Court to hear their claims and decide them on the merits.

222 17.

The plaintiffs are not entitled to the injunctions prayed for in the bills of complaint, or any other equitable relief in these actions.

18.

The bills of complaint should be dismissed on the merits with costs, and a decree should be entered accordingly.

19.

Each city involved in these suits has a right to engage in competition with plaintiff utility company operating within that city, and to require that plaintiff to discontinue its operations in such city when its franchise has expired.

20.

The provisions of the contracts relating to wages and hours and conditions of labor in the construction of the projects are stipulated by the contracts, and cannot be changed by any of the defendants.

21.

The contracts contain no provisions constituting any delegation by any of the cities involved in these suits of their powers to the defendants or to the United States.

22.

ALFRED A WHEAT
Chief Justice

June 26, 1936

Note: This is filed in 58,810, the Texas Utilities case. Ink corrections show only changes made in original.

223 *Decree*

Filed June 26 1936

* * * * * * * * * * *

These causes came on to be heard at this term on the merits and after the taking of testimony on behalf of all parties, were argued by counsel; and upon consideration thereof, it is this 26th day of June, 1936,

Ordered, Adjudged and Decreed that the bill of complaint in each of the above causes be and it is hereby dismissed on the merits, with costs.

ALFRED A. WHEAT
Chief Justice.

From the foregoing decree the plaintiffs in each cause give notice of appeals in open court to the United States Court of Appeals for the District of Columbia, which appeals are hereby allowed, and undertaking for costs is fixed at $100, or $50 cash in each case.

ALFRED A. WHEAT
Chief Justice.

224 *Order Continuing Preliminary Injunction*

Filed June 26 1936

* * * * * * * * * * *

The above entitled cause having been consolidated with Equity No. 58927, 59081 and 59671, both for trial in this Court and on appeal, and it appearing to the Court that the United States Court of Appeals for the District of Columbia has directed that the preliminary injunctions theretofore entered in said three cases shall be continued, and appeals having been this day taken in open Court from the decree of this Court dismissing the bills of complaint in said causes, as well as in this cause, and counsel for the defendants having signified that there was no objection to the entry of this decree, it is, by the Court, this 26th day of June, 1936,

Adjudged, Ordered and Decreed, that the preliminary injunction heretofore entered in the above entitled cause on the 16th day of January, 1936, and the injunction undertaking heretofore filed herein on the same day, be and the same are hereby continued in full force and effect until the final determination of this suit.

ALFRED A. WHEAT
Chief Justice.

No objection:—

ALEXANDER HOLTZOFF
Attorney for defendants

225 *Memoranda*

June 26, 1936.

Order extending time to file Statement of Evidence to and including August 5, 1936.

July 14, 1936.

$50 deposited in lieu of bond on appeal.

August 5, 1936.

Statement of Evidence and notice filed.

August 15, 1936.

Statement of Evidence signed. This is the same Statement of Evidence transmitted to Court of Appeals, in causes Nos. 58927 and 59071, in Equity.

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226 *Assignments of Error.*

Filed August 15 1936

* * * * * * * * * * *

Now comes the plaintiff and assigns as errors the action of the Court in the following particulars:

1. The Court erred in dismissing the bill of complaint and in making its conclusions of law numbered 17 and 18.

2. The Court erred in making its conclusions of law numbered 1, 2, and 4, the error being that in so far as Title II of the National Industrial Recovery Act and The Emergency Relief Appropriation Act of 1935 were construed to authorize the acts of the defendants herein said statutes violate the Constitution of the United States in the following respects:

(a) Neither Article I, Section 8, Clause 1 or 2, nor any other Section or Clause thereof grants to Congress the power to authorize the acts of the defendants; among other things the general welfare of the United States is not subserved thereby, but the benefits, if any, of the proposed action are purely local and not national.

(b) The Tenth Amendment denies to Congress the power to authorize the acts of the defendants in that

(1) they regulate and affect matters of purely local concern in Iowa City, Iowa, wholly within the police
227 power of the State of Iowa, and not subject, directly or indirectly, to Federal control;

(2) their primary purpose and necessary effect is to regulate and lower intrastate electricity rates and to promote public ownership of electricity facilities;

(3) their purpose and effect is to effectuate control by the Federal Government over working conditions and other details of the construction and operation of electricity project in Iowa City, Iowa.

(c) Both Title II of the National Industrial Recovery Act and The Emergency Relief Appropriation Act of 1935 delegate power beyond the limitations of Article I, Section 1; Article I, Section 8, Clauses 1, 2, and 18; Article I, Section 9, Clause 7; Article II, Section 1; and the other provisions of the Constitution contemplating a division of power among independent branches of the Government of the United States.

(d) Neither the said statutes nor the acts of the defendants have provided the plaintiff with an adequate hearing, and they otherwise arbitrarily provide for and seek the taking of the plaintiff's property without the due process guaranteed by the Fifth Amendment.

(e) They set up no adequate standards to guide the President and his appointees in the exercise of their discretion in carrying out the powers attempted to be conferred upon them.

3. The Court erred in making its conclusion of law numbered 4 the error being, in addition to that set forth in Assignment 2, *supra*, that neither the Emergency Relief Act of 1935 nor Section 12 of The Emergency Relief Appropriation Act of 1935 reaffirmed any standards, as administratively interpreted or otherwise, set forth in Title II of the National Industrial Recovery Act.

4. The Court erred in making its conclusion of law numbered 5, the error being that the lowering of rates is not the incidental effect of what the States and municipalities decide to do, but is the paramount, desired and necessary effect of the defendants' actions.

228

5. The Court erred in making its conclusion of law numbered 6, the error being that the defendants, through control over allotted funds and otherwise, retain unlimited power with respect to the Iowa City project, and that the defendants are exercising and will in the future exercise this control, as well as their other powers, to effectuate

regulation of commerce, within the State of Iowa and other States, in derogation of the police power of the States.

6. The Court erred in making its conclusions of law numbered 7, 8, 9, 10, 11, and 14, the error being that the action of the defendants is not authorized by Title II of the National Industrial Recovery Act or The Emergency Relief Appropriation Act of 1935 for the following reasons:

(a) The comprehensive program required by Section 202 and 203 of the National Industrial Recovery Act has never been prepared.

(b) The Iowa City project is not reasonably designed to increase employment quickly as required by Section 203 of the National Industrial Recovery Act and Section 1 of The Emergency Relief Appropriation Act of 1935.

(c) The Iowa City project is not "useful", in the sense required by law, but is wasteful and useless.

(d) This project is designed to effectuate the reduction of and control over intrastate electricity rates at the defendants' direction and the furthering of public ownership of electricity facilities.

7. The Court erred in making the first clause of its conclusion of law numbered 13 for the reasons set forth in Assignments 2 and 6, *supra.*

8. The Court erred in making its conclusions of law numbered 13, 15, and 21 for the reasons set forth in Assignments 2 and 6, *supra.*

9. The Court erred in making its conclusion of law
229 numbered 20 for the reason that the defendants may impose such changes.

10. The Court erred in making its conclusion of law numbered 14 for the reason among others, in addition to those set forth in Assignment 6, *supra,* that thus to limit judicial review deprives the plaintiff of the privilege of the full and complete judicial scrutiny of the facts, jurisdictional and otherwise, guaranteed it by the due process clause of the Fifth Amendment, by Article III, Sections 1 and 2 of the Constitution, and by Title 18, ch. 3, Sec. 41, 43, 44, and 47 of the Code of the District of Columbia.

11. The Court erred in making conclusion of law numbered 9, the error being that the term "work" as used in The Emergency Relief Appropriation Act of 1935 does not include indirect labor resulting from the expenditures for

such projects, but only includes direct labor at the site of the projects.

12. The Court erred in making its conclusion of law numbered 19, the error being that the City of Iowa City may not compete with or supplant plaintiff in an illegal manner and particularly by means of a grant from the United States on the terms and conditions involved in this case.

13. The Court erred in its Finding of Fact No. 19, the error being that there was no evidence that the City of Iowa City is authorized to issue bonds and receive grants for the purpose of financing the construction of a municipally owned electric light and power plant and distribution system and such issues were expressly withdrawn from this suit.

14. The Court erred in making its seventh paragraph of finding of fact numbered 31, the error being that the action of the Special Board for Public Works upon applications was taken subsequent to action by the Administrator.

15. The Court erred in making its finding of fact numbered 32, the error being that in the case of electricity projects, including that for Iowa City, preferential
230 treatment was given by PWA, and through the Electric Power Board of Review private utilities were given an opportunity to escape competition by lowering their rates to a point satisfactory to Federal officials who had no legal interest in the matter; and that in the case of electricity projects, including that of Iowa City, a peculiar test of social desirability was applied by PWA and the defendants, to-wit, the lowering of electricity rates and extension of public ownership.

16. The Court erred in findings Nos. 31 and 32, the error in addition to the foregoing being that the application of Iowa City for funds was not examined and reported on by representatives of the Legal, Engineering and Financial divisions of the State Office of PWA for Iowa.

17. The Court erred in making its finding of fact numbered 33, the error being that certain of the subordinate bodies of PWA and agents of defendants were authorized to solicit applications through publicity and otherwise and to enter into negotiations with private utilities relative to electricity rates.

18. The Court erred in making its finding of fact numbered 35, the error being that PWA and the defendants did

make the determination that competition with the plaintiff was desirable, the error further being that PWA and the defendants solicited applications for projects through widespread publicity and offers of free gifts and otherwise, that the defendants have sought injury to the plaintiff and the lowering of rates in Iowa City and in other intrastate localities throughout the nation, and that the arrangements with Iowa City do purchase control by defendants over matters of local concern.

19. The Court erred in making its findings of fact numbered 36, 37 and 38, the error being that they have no support in the evidence; and further that the offer made to Iowa City was based upon an application providing for a specified schedule of rates and a total elimination of plaintiff from competition with the proposed municipal plant.

20. The Court erred in making its findings of fact
231 numbered 41, the error being that the finding is in truth a conclusion of law and, further, is contrary to the evidence.

21. The Court erred in making its finding of fact numbered 44, the error being that the action of the President in stating that 25% of the loan or grant to the City of Iowa City or the aggregate thereof will be expended for work on the project was not a determination of such facts.

22. The Court erred in making its finding of fact numbered 47, the error being the same as that in the case of finding numbered 41, *supra*, and being further that the purpose and necessary effect of the defendants' acts was to regulate and lower intrastate electricity rates and to further public ownership of electricity facilities by encouraging municipalities to undertake such projects, by threatening private utilities with competition unless rates were reduced, and by other means; and being further that the relief of unemployment did not enter into the defendants' consideration, and projects were not financed for that purpose or with that effect.

23. The Court erred in making its finding of fact numbered 48, the error being that there is no evidence that electricity projects such as that in Iowa City is particularly adapted to the relief of unemployed persons, but the evidence shows that the direct labor furnished by such projects is negligible in amount, and such as is furnished is at greatly higher cost than in the case of any other type of

project financed by PWA, that the indirect labor involved is uncertain and speculative in amount, location, and character, that all labor involved will not necessarily or probably go to unemployed persons but will go to any persons whom private contractors may choose to employ, and chiefly to skilled workers in crafts wherein there is, and, at the time the bills herein were filed, there was little if any unemployment.

24. The Court erred in failing to find that the plaintiff adequately serves the electricity needs of Iowa City, Iowa, and its residents under the regulation of the City
232 Council of Iowa City a body created by the law of Iowa with general and exclusive power and jurisdiction to regulate and supervise electric utilities in Iowa City, and, that the defendants' project will not serve new users or promote any other useful purpose but will merely duplicate present service, destroy the existing facilities and completely eliminate the plaintiff from the City of Iowa City, thereby causing the unemployment of a number of employees of the plaintiff, and, further, adversely affect electricity service in Iowa City and contiguous territory which the plaintiff has for some time supplied at progressively reduced rates; and will increase the cost to consumers of gas now supplied to Iowa City by plaintiff.

25. The Court erred in failing to find that no comprehensive program of public works has ever been prepared, and that the defendants have merely financed individual projects from time to time without regard to any comprehensive program, unless it be a program to reduce electricity rates and further public ownership of electricity facilities.

26. The Court erred in failing to find that the defendants, through control over the funds wherewith projects are financed, through their power of rescission of agreements and allotments, through their inspectors, and otherwise, required the construction of projects according to plans and specifications, construction policies, standards of materials, etc., imposed and fixed by the defendants.

27. The Court erred in failing to find that neither the defendants, the President of the United States, nor anyone else, ever made any findings of facts with respect to whether public works projects, and specifically the Iowa City project, came within the statutory authorization of Congress.

28. The Court erred in failing to find that the action of the President referred to in its finding of fact numbered 44 was taken with no evidence or information before him supporting such a determination, and that there will not be spent for work on the project of the City of Iowa City
233 25% of the loan or grant or aggregate thereof.

29. The Court erred in failing to find that funds borrowed by the United States are to be a source for the funds to be used to finance the electricity project of Iowa City.

30. The Court erred in failing to find that neither the defendants, nor anyone else, ever afforded to the plaintiff any opportunity to be heard, to examine and cross-examine witnesses, and to present evidence bearing upon its rights with respect to the proposed loans and grants to the City of Iowa City.

31. The Court erred in failing to find the facts set forth in Assignments 15, 17, 18, 22 and 23 herein.

32. The Court erred in failing to find that the City of Iowa City took no action looking to the establishment of a municipally owned electricity plant until September 1, 1933; subsequent to the passage of the National Industrial Recovery Act and the offers of financial assistance made by defendants.

33. The Court erred in refusing to require the defendants to produce a memorandum from Henry Hunt, Chairman PWA Electric Power Board of Review to Harold L. Ickes, Administrator, a letter from said Administrator to the President, and a memorandum from the President to the Administrator, all subpoenaed by the plaintiff and by which plaintiff offered to prove that the conduct of the Electric Power Board of Review was in accordance with instructions of the Administrator and the President.

34. The Court erred in excluding testimony of the witness Rau by which the plaintiff offered to prove that the Electric Power Board of Review was governed by instructions from the Administrator and the President; that when an application for a loan and grant for a municipal electric project came before it, the Board considered first whether the project would reduce the rates paid for electric energy; that if it would not, the Board would disapprove the application; that private utilities were notified that if they lowered their rates below the proposed city rates the

234 project would be disapproved; that the city applicant was then given a further chance to reduce the proposed rates; and that applications were in many instances disapproved by the Board if the City could not meet the private utility reduced rates.

35. The Court erred in excluding testimony of the witnesses Vennard, Cary, Board, Kennedy and Byerly and documentary evidence by which plaintiffs offered to prove in specific instances the practices mentioned in Assignment 34, the final action taken in such cases by PWA, and admissions relevant thereto binding upon the defendants.

36. The Court erred in excluding telegraphic correspondence between the defendant Ickes and one F. T. Post, Plaintiffs' Exhibits for Identification Nos. 231 and 232, by which plaintiff sought to show an admission by the defendant that the PWA Electric Power Board of Review engaged in such negotiations as are set forth in Assignment 34 with his knowledge and approval.

37. The Court erred in ruling that the defendants need not produce in response to a subpoena the findings, recommendations or reports of the Electric Power Board of Review, the examining divisions of PWA, or any agency whatever of PWA, except the Special Board of Public Works, upon the projects here involved.

38. The Court erred in ruling that the defendants need not produce in response to subpoena the resolutions and other proceedings of the Special Board for Public Works, determining the principles to govern the allotment and expenditure of funds under Title II of the National Industrial Recovery Act.

39. The Court erred in excluding from evidence a book and certain magazine articles written by the defendant Ickes and certain passages therefrom (Plaintiffs' Exhibits for Identification Nos. 123, 141, 143) and certain documents and letters issued and written by PWA (Plaintiffs' Exhibits for identification Nos. 140, 217-230, inclusive, and 254) offered as admissions by the defendants of the truth of the facts stated by which plaintiff sought to show that the purpose and effect of the acts of the defendants here complained of was to regulate and control the intrastate business of the plaintiff in generating and selling electric energy and
235 the rate charged by it, to establish yardsticks to measure charges for such energy sold in intrastate

commerce, to promote public ownership of electric generating and distributing systems,— all in accord with the so-called National Power Policy of the Federal Administration—; and that the defendants solicited and promoted the cooperation of political subdivisions of States in undertaking such projects, that the plaintiff and other privately owned utilities were denied a hearing with respect to such projects, and, by the control of the funds expended, that the defendants controlled the execution of such projects.

40. The Court erred in excluding from evidence certain publications of the National Power Policy Committee, addresses of the President, publications of the Tennessee Valley Authority, (Plaintiffs' Exhibits for identification Nos. 165-170, inclusive, 175-179, inclusive, 181, 183, 184), setting forth the so-called National Power Policy of the Administration referred to by the defendant Ickes, by which plaintiff sought to show that the purpose and effect of the acts of the defendants here complained of were as set forth in Assignment 39.

41. The Court erred in refusing to receive the testimony of the witnesses Lawrence, Field and Byerly, and the depositions of the witnesses Hiss, Harvey, Hoffman, Dysart and Rowell and documentary evidence (Plaintiffs' Exhibits for identification 21, 22, 268, 269, 270) by which plaintiff sought to prove that the offer of PWA to make a grant of from 30 to 45 per centum of the cost of construction of municipal electric projects and to lend the remainder of the cost to be repaid only out of the earnings of the proposed project had the effect of inducing certain of the municipalities here involved and municipalities generally to undertake such projects and that in elections held to vote upon such projects the proponents thereof represented said offer as a gift imposing no liability upon the recipients.

42. The Court erred in permitting the witness Ickes to testify as to action he took concerning correspondence by Mr. Hunt relating to an application of Hiram, Ohio,
236 and in receiving in evidence Defendants' Exhibit No. 11.

43. The Court erred in permitting the witness Ickes upon his redirect examination to answer the following question: "Your purpose in making these contracts for these competitive projects always was to increase employment quickly

as the statute required, and these other considerations were only incidental and collateral?''

44. The Court erred in refusing to require the production by the defendants, in response to plaintiffs' subpoenas duces tecum, of each of the following documents and in depriving plaintiff of the right to offer such documents in evidence:

(a) The report of State Engineer P. F. Hopkins to PWA on the application of Iowa City for a loan and grant.

(b) The report of the Engineering, Legal and Financial Divisions of PWA at Washington on said application.

(c) The application for allotment of funds under Emergency Relief Appropriation Act of 1935, NEC Form 3, addressed to the National Emergency Council with respect to the application of the City of Iowa City.

(d) The report of R. V. L. Wright on the remonstrance of the plaintiff in connection with the application to reinstate the original application of the City of Iowa City.

(e) All other memoranda or reports by the Iowa Field Office of PWA which the witness Hopkins made to the Administrator or the Department in connection with the Iowa City Project.

45. The Court erred in excluding each of the following portions of evidence offered by plaintiffs as follows:

(a) In sustaining defendants' objection to the question put to the witness R. B. MacDonald with respect to the history of rates in Iowa City from 1920 to date and the trend thereof, and in rejecting plaintiff's offer to prove by said witness that since 1926 the average cost of electricity in Iowa City has decreased 52%.

(b) In excluding plaintiff's evidence that the electric rates in effect in Iowa City are lower than the rates
237 in any city in Iowa of comparable population.

(c) In excluding plaintiff's Exhibits for identification Nos. 45, 54, 55, 58, 59 and 60 and each of them.

WALTER B. GUY
LOUIS H MANN
C D WATERMAN
WAYNE G COOK
Davenport, Iowa.
Attorneys for Plaintiff.

Service of the foregoing, by copy, acknowledged this 15th day of August 1936.

ALEXANDER HOLTZOFF
Attorney for Defendants.

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238 *Designation of Record.*

Filed July 28 1936

* * * * * * * * * * *

The Clerk will please prepare the record on appeal in the above entitled cause and include therein the following:

1. Bill of Complaint with Exhibts thereto.
2. Memorandum that a preliminary injunction was entered January 16, 1936.
3. Order consolidating causes.
4. Answer to bill of complaint and Exhibit.
5. Amendment and Supplement to bill of complaint.
6. Memorandum Opinion of Chief Justice Wheat filed June 5, 1936.
7. Finding of Fact and Conclusions of Law filed June 26, 1936.
8. Final decree entered June 26, 1936, and plaintiff's notation of appeal therefrom.
9. Order continuing preliminary injunction.
10. Notation of deposit of $50.00 cash by plaintiff in lieu of cost undertaking on appeal.
11. Memoranda as to filing, submission and signing of Statement of Evidence.
12. Statement of Evidence.
13. Assignment of errors.
14. This designation.

WALTER B GUY
LOUIS H. MANN
239 C D WATERMAN
WAYNE G COOK
Attorneys for Appellant.

Service of the foregoing designation of record by copy acknowledged this 28 day of July 1936.

ALEXANDER HOLTZOFF
Attorneys for Defendant.

240 District Court of the United States
for the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 239, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 60245 in Equity, wherein Iowa City Light and Power Company, a corporation, is Plaintiff and Harold L. Ickes, Administrator of the Federal Emergency Administration of Public Works, et al, are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of October, 1936.

C. E. STEWART,
Clerk.

(Seal)

Endorsed on Cover: No. 6865. Iowa City Light and Power Company, a Corporation, Appellant, vs. Harold L. Ickes, Administrator &c. et al. United States Court of Appeals for the District of Columbia Filed Oct 20 1936 Moncure Burke, Clerk